

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 28 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

WAYNE ADAMS,)
)
Plaintiff)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant)
)
v.)
)
EDEL F. EUBANKS,)
)
Additional Defendant)
on Counterclaim)

CIVIL NO. 84-C-429-E

DEFAULT JUDGMENT

The third-party plaintiff in the above-entitled action, United States of America, has moved the Court, pursuant to Rule 55(b)(2) and (d), Federal Rules of Civil Procedure, for entry of a default judgment against the additional defendant on counterclaim, Edsel F. Eubanks. It appears by competent proof that entry of default judgment in this instance is proper, and it is therefore

ORDERED, ADJUDGED and DECREED that the plaintiff on counterclaim, United States of America, have and recover

of additional defendant on counterclaim, Edsel F. Eubanks,
\$20,034.09 plus interest and penalties as allowed by law,
and for its costs of suit.

ENTERED THIS 27TH DAY OF June, 1985.

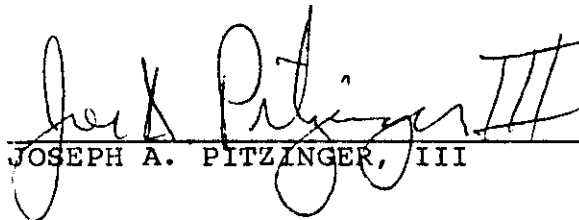
James L. Sullivan
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing
United States of America's Motion for Entry of Default
Judgment has been made this 25th day of June, 1985, by
mailing a copy thereof to:

David H. Loeffler and
Mr. Charles K. Ham
Attorneys at Law
119 West 6th Street
Bristow, Oklahoma 74010

Edsel F. Eubanks
Appearing Pro se
P. O. Box 462
Sapulpa, Oklahoma 74066


JOSEPH A. PITZINGER, III

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 28 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

R. PERRY WHEELER, AGNES
COWAN, WENDALL COCHRAN,
GEORGE WICKLIFFE, JAMES
DUFFIELD, GILBERT GREEN,
MARION HAGERSTRAND, and
GLORIA WILSON,

Plaintiffs,

vs.

No. 84-C-305-C

ROSS O. SWIMMER, DORA
WATIE, GARY CHAPMAN,
DENNIS SPRINGWATER,
JOE M. PARKER, FRANK
FERRELL, GENE THOMPSON,
NATHAN YOUNG, DOROTHY
WORSHAM, MAUDE DAVIS,
ELIZABETH SULLIVAN, MARIE
WADLEY, RAY McSPADDEN,

Defendants,

and WILMA MANKILLER,
AMON BAKER, SAM ED BUSH,
DON CRITTENDEN, LEO
FISHINGHAWK, STANN
HUMMINGBIRD, JR., JOHN A.
KETCHER, BOB McSPADDEN,
PATSY MORTON, GOODLOW
PROCTOR, RON QUALLS,
BARBARA STARR SCOTT,
CLARENCE SUNDAY, DAVE
WHITEKILLER and WATHENE
YOUNG,

Defendants.

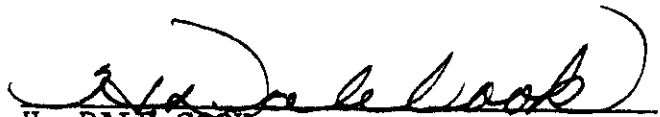
J U D G M E N T

This matter came on before the Court for determination of defendants' motion for dismissal for failure to state a cause of action and lack of subject matter jurisdiction. There being no

controverted material facts, the issues having been duly considered, and a decision having been duly rendered in accordance with the Order granting dismissal herein,

IT IS ORDERED AND ADJUDGED that the defendants, Ross Swimmer et al., are entitled to judgment against the plaintiffs, R. Perry Wheeler et al., pursuant to Rule 12(b) F.R.Cv.P.

IT IS SO ORDERED this 28th day of June, 1985.


H. DALE COOK
Chief Judge, U. S. District Court

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 28 1935

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

R. PERRY WHEELER, AGNES
COWAN, WENDALL COCHRAN,
GEORGE WICKLIFFE, JAMES
DUFFIELD, GILBERT GREEN,
MARION HAGERSTRAND, and
GLORIA WILSON,

Plaintiffs,

vs.

No. 84-C-305-C

ROSS O. SWIMMER, DORA
WATIE, GARY CHAPMAN,
DENNIS SPRINGWATER,
JOE M. PARKER, FRANK
FERRELL, GENE THOMPSON,
NATHAN YOUNG, DOROTHY
WORSHAM, MAUDE DAVIS,
ELIZABETH SULLIVAN, MARIE
WADLEY, RAY McSPADDEN,

Defendants,

and WILMA MANKILLER,
AMON BAKER, SAM ED BUSH,
DON CRITTENDEN, LEO
FISHINGHAWK, STANN
HUMMINGBIRD, JR., JOHN A.
KETCHER, BOB McSPADDEN,
PATSY MORTON, GOODLOW
PROCTOR, RON QUALLS,
BARBARA STARR SCOTT,
CLARENCE SUNDAY, DAVE
WHITEKILLER and WATHENE
YOUNG,

Defendants.

O R D E R

Now before the Court for its consideration is the motion of the defendants for dismissal, pursuant to Rule 12(b) F.R.Cv.P. for the reasons that the complaint fails to state a cause of action

upon which relief can be granted and the Court lacks subject matter jurisdiction.

Plaintiffs brought this action to challenge the validity of the June 18, 1983 tribal elections of the Cherokee Nation of Oklahoma. The plaintiffs are eight unsuccessful candidates in that election. The defendants are the successful incumbents which include the principal chief of the tribe, the deputy chief, all members of the tribal council, the tribal election committee, the tribal registrar, director and assistant director of the Cherokee Housing Authority, and three employees of the Bureau of Indian Affairs (BIA).

Plaintiffs allege that because of various acts of the defendants during, prior and subsequent to the time of the tribal election they were denied rights guaranteed by the Constitution of the United States, and federal statutory law. In particular, they allege that the tribal election committee caused eligible voters to be deprived of their right to vote. In particular, they mishandled absentee ballots and voter negotiations; formulated and carried out improper rules; and failed to provide a proper forum, procedure or appeal for protests of irregularities. The tribal election committee conspired with all other defendants to enhance the candidacy of those who were successful and the BIA agents knew about these irregularities and covered them up.

Jurisdiction is alleged under 28 U.S.C. §1331 (federal question); 28 U.S.C. §1343(4) (original jurisdiction for civil rights violations); the First, Fifth, Ninth, Thirteenth and Fifteenth Amendments to the United States Constitution; 42 U.S.C.

§1985(3), 1986; 25 U.S.C. §1301 et seq. and the Treaty of July 19, 1866 between the United States and the Cherokee Nation.

Plaintiffs allege the actions of the defendants deprived them of their civil rights and equal protection of the law in violation of the Indian Civil Rights Act, 25 U.S.C. §1301, 1302; the United States Constitution, the Treaty and the Constitution and ordinances of the Cherokee Nation. It is also alleged that defendants conspired to deprive plaintiffs, as a class, of exercising their rights and privileges as citizens in violation of 42 U.S.C. §1985(3). The plaintiffs assert a civil action for declaratory and injunctive relief, and money damages.

The issue before the Court is whether subject matter jurisdiction exists. In determining this issue the Court must review the facts alleged to see whether they state a cause of action which "arises under" federal statutory law conferring jurisdiction on federal district courts; or, whether the facts present a dispute which is exclusively an intra-tribal matter to be resolved by the Cherokee people as a sovereign entity.

The Indian Civil Rights Act

Plaintiffs assert subject matter jurisdiction under 25 U.S.C. §§1301, 1302(8) commonly referred to as the Indian Civil Rights Act. In Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978) the Supreme Court provided a comprehensive review of this Act. The Court premised its legal analysis by quoting a well seasoned maxim: "Indian tribes are distinct, independent political communities, retaining their original natural rights in matters of local self-government. Id. at 55 citing Worcester v.

George, 6.Pet.515, 559 (1832); United States v. Mazurie, 419 U.S. 544, 557 (1975); and F. Cohen, Handbook of Federal Indian Law 122-123 (1945). The Court held in Martinez that the only federal relief available under the Indian Civil Rights Act against a tribe or to officers is a writ of habeas corpus. Thus, actions seeking other types of relief for tribal deprivation of rights must be resolved through tribal forums. Goodface v. Grassrope, 708 F.2d 335, 338, f.n.4 (8th Cir. 1983). This Court lacks jurisdiction to hear plaintiffs' action under 25 U.S.C. §1302.

The Federal Civil Rights Act

Plaintiffs also assert jurisdiction under 42 U.S.C. §1985(3) and 28 U.S.C. §1343(4). The Supreme Court in Griffin v. Breckenridge, 403 U.S. 88 (1971) has delineated the criteria to determine whether subject matter jurisdiction exists in a case brought under §1985(3). The Court held that the statute reached private conspiratorial actions but cautioned that it did not "apply to all tortious, conspiratorial interferences with the rights of others." Id. at 101. Griffin involved a private conspiracy by whites to deprive blacks of equal protection under law. The Court held that racial and class-based invidious discrimination motivated the conspiracy. Therefore to qualify under §1985(3), one of the requirements is to show that there exists a racial, or otherwise class-based, invidiously discriminatory motivation behind the conspirator's action. Id. Following its decision in Griffin the Supreme Court has declined to decide whether a conspiracy motivated other than by racial bias would be actionable under §1985(3). Lessman v. McCormack, 591

F.2d 605, 608 (10th Cir. 1979). In the case sub judice, plaintiffs attempt to meet this requirement by asserting they are a distinct class defined as political opponents "who support traditional native values and culture." (Plaintiffs' Brief at p.7). The Court recognizes that the breadth and limitations of §1985(3) is a subject of considerable controversy among the circuit and district courts. See, Regan v. Sullivan, 557 F.2d 300, 308, f.n.9 (2nd Cir. 1977). The Eighth Circuit has taken the position that the right to vote is fundamental to a representative government, a right which Congress has the power to guarantee under statute. Congress guaranteed Indian tribes this right by enacting the Indian Civil Rights Act. Means v. Wilson, 522 F.2d 833, 839 (8th Cir. 1975). Following this logic, that court held that §1985(3) protected the right to vote in tribal elections against interference from private conspiracies. Id.

The court attempted to comply with the Griffin requirement by defining the defendants as a class of political opponents. In so doing, it held that the federal courts have jurisdiction to hear an action under 42 U.S.C. §1985(3) to vindicate interference with the right to vote, as a deprivation of equal protection or equal privileges and immunities under law. Id. at 839.

The Second Circuit has held that a person who is fired from his position with the State Civil Service because of his political affiliation states a cause of action under 42 U.S.C. §1985(3). The court classified Republicans as a qualified class in which the statute protects against discrimination due to chose of political affiliation. Keating v. Carey, 706 F.2d 377 (2nd

Cir. 1983). Other circuit courts have construed §1985(3) as including the following groups representative of class-based discrimination: Marlow v. Fisher Body, 489 F.2d 1057 (6th Cir. 1973) (members of Jewish faith); Novotny v. Great Am. Federal Sav. & Loan Assoc., 584 F.2d 1235 (3rd Cir. 1978) (members of the female sex); Richardson v. Miller, 446 F.2d 1247 (3rd Cir. 1977) (employees who oppose racially discriminatory employment practices); and Cameron v. Brock, 473 F.2d 608 (6th Cir. 1973) (challengers of a sheriff's election who were arrested for opposing the incumbent's re-election). The Tenth Circuit has not specifically ruled whether intra-tribal disputes constitute class-based discrimination under §1985(3). In Lessman v. McCormack, supra, the court held that a female debtor, who was arrested for failure to pay overtime parking tickets, was not within a protected class "consisting of all debtors". 591 F.2d at 608. Plaintiff alleged a conspiracy by bank officials and police in order to intimidate her and aid in the bank's debt collection process. The court held that her alleged conspiracy was not the object of class-based invidious discrimination, violative of her civil rights. Id. at 607.

This Court is of the view that the allegations set forth in the case sub judice are not racial, nor are they class-based. They do not charge a conspiratorial action by whites against blacks as in Griffin, supra. Indians are a distinct class of citizens which have a cause of action against non-Indians who discriminate against them as a class. However this lawsuit involves Indians against Indians who desire to hold the same

tribal political offices. The Court is mindful of the contrary ruling by the Eighth Circuit in Means v. Wilson, supra. The Court is also aware that the Supreme Court's holding in Santa Clara Pueblo v. Martinez, supra, was contra to the aspect of that case's holding which conferred jurisdiction in federal courts in cases alleging deprivations under 25 U.S.C. §1301, in any form other than writs of habeas corpus. Following the same reasoning of the Supreme Court in Martinez, this Court holds that plaintiffs have not alleged a cause of action for which relief may be granted arising under 42 U.S.C. §1985(3) nor does the Court have jurisdiction pursuant to 28 U.S.C. §1343(4). In Martinez, the Supreme Court emphasized the "distinct, independent, political community" and sovereignty of the Indian nation. 436 U.S. at 55. In its holding the Court was concerned about "additional intrusions on tribal sovereignty" without the clear intent of Congress to permit it. 436 U.S. at 72.

In reviewing the legislative history of 25 U.S.C. §§1301 and 1302, the Tenth Circuit has said:


Congress was concerned primarily with tribal administration of justice and imposition of tribal penalties and forfeitures, and not with the specifics of tribal structure or office holding. By its stated intentional exclusion from the Act of the provisions of the Fifteenth Amendment, any basis of federal court jurisdiction over tribal elections was definitely eliminated. 442 F.2d at 682, (emphasis added).

In their complaint, plaintiffs are asking this Court to assume jurisdiction in order to evaluate the propriety of tribal

elections. This Court declines to assume jurisdiction over purely intra-tribal political controversies.

Accordingly, it is the Order of the Court that the defendants' motion to dismiss is granted.

IT IS SO ORDERED this 28th day of June, 1985.


H. DALE COOK
Chief Judge, U. S. District Court

Extended

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RIVERSIDE OIL & REFINING CO.,)
INC., a Louisiana corporation,)

Plaintiff,)

vs.)

WESTSIDE ENERGY CO., INC.,)
an Oklahoma corporation;)
RAYMOND FORT; LEWIS LONG; and)
FINIS SMITH,)

Defendants.)

No. 83-C-124-E

FILED

JUN 28 1985

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

DISMISSAL WITH PREJUDICE

For and in consideration of the execution of mutual dismissals with prejudice of all claims raised or that could have been raised in the present litigation, and in further consideration of the execution by the plaintiff of the release attached hereto as Exhibit "A", all defendants hereby dismiss with prejudice all claims and causes of action contained in or that might have been contained in this litigation.

Dated this 25th day of June, 1985.

Darven L. Brown
Darven L. Brown, Attorney for
Finis Smith

Lynn A. Mundell
Lynn Mundell, Attorney for
Westside Energy Company,
Raymond Fort, and
Lewis Long

James C. Garland
James C. Garland, Attorney
for Westside Energy Company,
Finis Smith, Raymond Fort,
and Lewis Long

RELEASE AND SETTLEMENT OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned party, for and in consideration of the mutual dismissals with prejudice of the court case styled "In the United States District Court for the Northern District of Oklahoma, Case No. 83-C-124-E, Riverside Oil & Refining Co., Inc., a Louisiana corporation, Plaintiff, vs. Westside Energy Co., Inc., an Oklahoma corporation; Raymond Fort; Lewis Long; and Finis Smith, Defendants," and the court case styled "In the District Court in and for Tulsa County, State of Oklahoma, Case No. C82-1308, Westside Energy Company, Inc., an Oklahoma corporation, Plaintiff, vs. Riverside Oil and Refining Co., Inc., a Louisiana corporation, Defendant," and other good and valuable consideration each to the other in hand paid, the receipt and adequacy of which is hereby acknowledged by the undersigned, Riverside Oil and Refining Company, Inc., a Louisiana corporation, for itself and its respective agents, representatives, successors and assigns, remises, releases and forever discharges the plaintiff and cross-defendants in the above State Court styled action, and the defendants in the above Federal Court styled action, Westside Energy Company, Inc., an Oklahoma corporation, Raymond Fort, Lewis Long, and Finis Smith, and their respective agents, representatives, successors and assigns, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, executions, claims, counterclaims,

Exhibit "A"

cross-claims, demands, liabilities, losses, costs, expenses and attorneys fees whatsoever in law or in equity which against the foregoing released parties or any of them the releasing party(ies) or any of them ever had or has up to the date of these presents for or by reason of or in respect of any act, cause, matter or thing, including but not limited to any of the facts, matters and/or circumstances alleged and/or concerned in the above styled causes. In consideration of the mutual covenants, promises and releases contained herein and the other consideration recited above, the undersigned agrees to file a dismissal with prejudice in the above styled cases.

This release may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall, when collated, constitute one and the same document.

IN WITNESS WHEREOF, the undersigned party has executed this Release and Settlement of All Claims on the date and year set forth beneath its signature.

(corporate seal)
ATTEST:

Joan Buchner
Secretary

RIVERSIDE OIL AND REFINING
COMPANY, INC., a
Louisiana corporation

By Wayne Buchner
President

STATE OF Texas
COUNTY OF Montgomery ss:

Date: 6-17-85

17th The foregoing instrument was acknowledged before me this day of June, 1985, by Wayne Buchner, President of Riverside Oil and Refining Company, Inc., a Louisiana corporation, on behalf of the corporation.

(seal)
My commission expires:



Drenda J. Hogue
Notary Public

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RIVERSIDE OIL & REFINING CO.,)
INC., a Louisiana corporation,))
)
Plaintiff,)
)
vs.)
)
WESTSIDE ENERGY CO., INC.,)
an Oklahoma corporation;)
RAYMOND FORT; LEWIS LONG; and)
FINIS SMITH,)
)
Defendants.)

FILED

JUN 28 1985

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

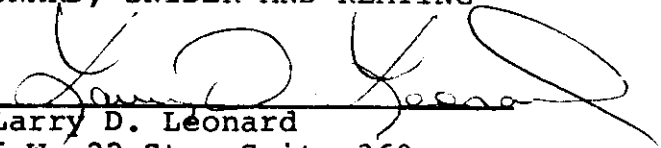
No. 83-C-124-E

DISMISSAL WITH PREJUDICE

For and in consideration of the execution of mutual dismissals with prejudice of all claims raised or that could have been raised in the present litigation, and in further consideration of the execution by the defendants of the releases attached hereto as Exhibits "A", "B", "C" and "D", the plaintiff hereby dismisses with prejudice all claims and causes of action contained in or that might have been contained in this litigation.

Dated this 24th day of June, 1985.

LEONARD, SNIDER AND KEATING

By 
Larry D. Leonard
5 W. 22 St., Suite 360
Tulsa, OK 74114
(918) 585-2275

Attorneys for Plaintiff

RELEASE AND SETTLEMENT OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned party, for and in consideration of the mutual dismissals with prejudice of the court case styled "In the United States District Court for the Northern District of Oklahoma, Case No. 83-C-124-E, Riverside Oil & Refining Co., Inc., a Louisiana corporation, Plaintiff, vs. Westside Energy Co., Inc., an Oklahoma corporation; Raymond Fort; Lewis Long; and Finis Smith, Defendants," and the court case styled "In the District Court in and for Tulsa County, State of Oklahoma, Case No. C82-1308, Westside Energy Company, Inc., an Oklahoma corporation, Plaintiff, vs. Riverside Oil and Refining Co., Inc., a Louisiana corporation, Defendant," and other good and valuable consideration each to the other in hand paid, the receipt and adequacy of which is hereby acknowledged by the undersigned, Westside Energy Co., Inc., an Oklahoma corporation, does for itself and its respective agents, representatives, successors and assigns, remise, release and forever discharge the plaintiff in the above Federal Court styled action, and the defendant in the above State Court styled action, Riverside Oil & Refining Co., Inc., and its respective agents, representatives, successors and assigns, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, executions, claims, counterclaims, cross-claims, demands, liabilities, losses, costs, expenses and attorneys fees whatsoever in law or in equity which against the

Exhibit "A"

foregoing released party or any of them the releasing party(ies) or any of them ever had or has up to the date of these presents for or by reason of or in respect of any act, cause, matter or thing, including but not limited to any of the facts, matters and/or circumstances alleged and/or concerned in the above styled causes. In consideration of the mutual covenants, promises and releases contained herein and the other consideration recited above, the undersigned agrees to file a dismissal with prejudice in the above styled cases.

This release may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall, when collated, constitute one and the same document.

IN WITNESS WHEREOF, the undersigned party has executed this Release and Settlement of All Claims on the date and year set forth beneath its signature.

(corporate seal)

ATTEST:

DW Fort
Secretary Vice President

WESTSIDE ENERGY CO., INC.,
an Oklahoma corporation

By

Dennis Long
President

Date:

6/25/85

STATE OF OKLAHOMA)
COUNTY OF TULSA) ss:

The foregoing instrument was acknowledged before me this 25th day of June, 1985, by Dennis Long, President of Westside Energy Co., Inc., an Oklahoma corporation, on behalf of the corporation.

(seal)

My commission expires:

4/22/86

Marilyn McCallister
Notary Public

RELEASE AND SETTLEMENT OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned party, for and in consideration of the mutual dismissals with prejudice of the court case styled "In the United States District Court for the Northern District of Oklahoma, Case No. 83-C-124-E, Riverside Oil & Refining Co., Inc., a Louisiana corporation, Plaintiff, vs. Westside Energy Co., Inc., an Oklahoma corporation; Raymond Fort; Lewis Long; and Finis Smith, Defendants," and the court case styled "In the District Court in and for Tulsa County, State of Oklahoma, Case No. C82-1308, Westside Energy Company, Inc., an Oklahoma corporation, Plaintiff, vs. Riverside Oil and Refining Co., Inc., a Louisiana corporation, Defendant," and other good and valuable consideration each to the other in hand paid, the receipt and adequacy of which is hereby acknowledged by the undersigned, Raymond Fort does for himself and his respective agents, representatives, successors and assigns, remise, release and forever discharge the plaintiff in the above Federal Court styled action, and the defendant in the above State Court styled action, Riverside Oil & Refining Co., Inc., and its respective agents, representatives, successors and assigns, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, executions, claims, counterclaims, cross-claims, demands, liabilities, losses, costs, expenses and attorneys fees whatsoever in law or in equity which against the foregoing released party or any of

Exhibit "B"

them the releasing party(ies) or any of them ever had or has up to the date of these presents for or by reason of or in respect of any act, cause, matter or thing, including but not limited to any of the facts, matters and/or circumstances alleged and/or concerned in the above styled causes. In consideration of the mutual covenants, promises and releases contained herein and the other consideration recited above, the undersigned agrees to file a dismissal with prejudice in the above styled cases.

This release may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall, when collated, constitute one and the same document.

IN WITNESS WHEREOF, the undersigned party has executed this Release and Settlement of All Claims on the date and year set forth beneath his signature.

Raymond W Fort
RAYMOND FORT

Date: 6-25-85

STATE OF OKLAHOMA)
COUNTY OF TULSA) ss:

The foregoing instrument was acknowledged before me this 5th day of June, 1985, by Raymond Fort.

(seal)

My commission expires:

4/22/86

Walter McCallum
Notary Public

RELEASE AND SETTLEMENT OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned party, for and in consideration of the mutual dismissals with prejudice of the court case styled "In the United States District Court for the Northern District of Oklahoma, Case No. 83-C-124-E, Riverside Oil & Refining Co., Inc., a Louisiana corporation, Plaintiff, vs. Westside Energy Co., Inc., an Oklahoma corporation; Raymond Fort; Lewis Long; and Finis Smith, Defendants," and the court case styled "In the District Court in and for Tulsa County, State of Oklahoma, Case No. C82-1308, Westside Energy Company, Inc., an Oklahoma corporation, Plaintiff, vs. Riverside Oil and Refining Co., Inc., a Louisiana corporation, Defendant," and other good and valuable consideration each to the other in hand paid, the receipt and adequacy of which is hereby acknowledged by the undersigned, Lewis Long does for himself and his respective agents, representatives, successors and assigns, remise, release and forever discharge the plaintiff in the above Federal Court styled action, and the defendant in the above State Court styled action, Riverside Oil & Refining Co., Inc., and its respective agents, representatives, successors and assigns, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, executions, claims, counterclaims, cross-claims, demands, liabilities, losses, costs, expenses and attorneys fees whatsoever in law or in equity which against the foregoing released party or any of

Exhibit "C"

them the releasing party(ies) or any of them ever had or has up to the date of these presents for or by reason of or in respect of any act, cause, matter or thing, including but not limited to any of the facts, matters and/or circumstances alleged and/or concerned in the above styled causes. In consideration of the mutual covenants, promises and releases contained herein and the other consideration recited above, the undersigned agrees to file a dismissal with prejudice in the above styled cases.

This release may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall, when collated, constitute one and the same document.

IN WITNESS WHEREOF, the undersigned party has executed this Release and Settlement of All Claims on the date and year set forth beneath his signature.

Lewis Long
LEWIS LONG

Date: 6/25/85

STATE OF OKLAHOMA)
COUNTY OF TULSA) ss:

The foregoing instrument was acknowledged before me this 25th day of June, 1985, by Lewis Long.

(seal)
My commission expires:

4/22/86

Maryann M. Collier
Notary Public

RELEASE AND SETTLEMENT OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned party, for and in consideration of the mutual dismissals with prejudice of the court case styled "In the United States District Court for the Northern District of Oklahoma, Case No. 83-C-124-E, Riverside Oil & Refining Co., Inc., a Louisiana corporation, Plaintiff, vs. Westside Energy Co., Inc., an Oklahoma corporation; Raymond Fort; Lewis Long; and Finis Smith, Defendants," and the court case styled "In the District Court in and for Tulsa County, State of Oklahoma, Case No. C82-1308, Westside Energy Company, Inc., an Oklahoma corporation, Plaintiff, vs. Riverside Oil and Refining Co., Inc., a Louisiana corporation, Defendant," and other good and valuable consideration each to the other in hand paid, the receipt and adequacy of which is hereby acknowledged by the undersigned, Finis Smith does for himself and his respective agents, representatives, successors and assigns, remise, release and forever discharge the plaintiff in the above Federal Court styled action, and the defendant in the above State Court styled action, Riverside Oil & Refining Co., Inc., and its respective agents, representatives, successors and assigns, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, executions, claims, counterclaims, cross-claims, demands, liabilities, losses, costs, expenses and attorneys fees whatsoever in law or in equity which against the foregoing released party or any of

Exhibit "D"

them the releasing party(ies) or any of them ever had or has up to the date of these presents for or by reason of or in respect of any act, cause, matter or thing, including but not limited to any of the facts, matters and/or circumstances alleged and/or concerned in the above styled causes. In consideration of the mutual covenants, promises and releases contained herein and the other consideration recited above, the undersigned agrees to file a dismissal with prejudice in the above styled cases.

This release may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall, when collated, constitute one and the same document.

IN WITNESS WHEREOF, the undersigned party has executed this Release and Settlement of All Claims on the date and year set forth beneath his signature.

FINIS SMITH

Date: June 25, 1985

STATE OF OKLAHOMA)
COUNTY OF TULSA) ss:

The foregoing instrument was acknowledged before me this 25 day of June, 1985, by Finis Smith.

(seal)

My commission expires:

March 26, 1988

Dwight K. Brady
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 28 1985

JEFFIE F. ROSZEL,
Plaintiff,

Jack C. Silver, Clerk
U.S. DISTRICT COURT

vs.

No. 84-C-858-E

GUARDSMAN LIFE INSURANCE
COMPANY, an Iowa corporation,
Defendant.

ORDER OF DISMISSAL

On this 27th day of June, 1984, upon written application of the parties for an order of dismissal with prejudice of the Complaint and all causes of action, the Court having examined said application finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss the Complaint with prejudice to any future action, and the Court having been fully advised in the premises finds that said Complaint should be dismissed. It is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the Defendant be and same are hereby dismissed with prejudice to any further action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 28 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RANDY GENE CLARK,

Defendant.

CIVIL ACTION NO. 85-C-271-E

ORDER OF DISMISSAL

Now on this 27th day of June 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Randy Gene Clark, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 28 1985
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

EARL R. GLASBY,
Plaintiff,
vs.
CLARK GLASBY,
Defendant.

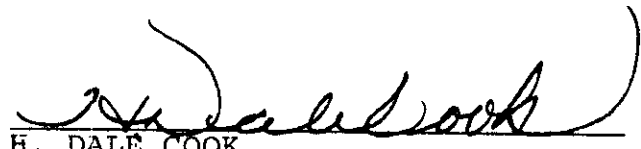
No. 85-C-480-C ✓

O R D E R

NOW, on this 28th day of June, 1985, there comes on
for consideration the plaintiff's Motion to Remand.

The Court finds that the defendant's Petition for
Removal was not timely filed within the requirements of
28 U.S.C. §1446(b) and that the case should be remanded
to the District Court.

IT IS THEREFORE ORDERED that the above-styled case
be remanded for further proceedings in the District Court
in and for Tulsa County, State of Oklahoma.


H. DALE COOK
Chief Judge, U. S. District Court

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 28 1985

CHARLES GIBSON,
Plaintiff,

vs.

MICHAEL C. TURPEN, et al.,
Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 84-C-808-E

ORDER

COMES now before the Court on this 27th day of June, 1985, the above-styled case and the Court being fully advised in the premises finds as follows:

On January 9, 1985 the Court entered an order granting Defendants' motions to dismiss this action on the grounds that Plaintiff, having sought no extension of time, failed to respond within the allotted time. On January 22, the Court received Plaintiff's letter requesting that the case be reopened. Such letter was incorporated into the file as a motion to vacate the Court's order of January 9, 1985 and a motion to stay this action pending decision by Oklahoma state courts. Court ordered Defendants to respond to Plaintiff's letter within ten days.

Defendant Turpen failed to respond to Plaintiff's letter motion as directed by Court order resulting in the Court's vacating its January 9 dismissal order as to Michael Turpen. Consequently, Plaintiff was ordered to respond to Turpen's previously filed motion to dismiss.

In response to Plaintiff's motion to vacate dismissal and

stay Defendant Tribune argues that such motions should be denied on the grounds that Plaintiff did not present sufficient justification for his failure to respond and further did not indicate how the alleged harrassment interfered with his duty to respond to motion to dismiss and therefore he should not be relieved of Local Rule 14.

The Court finds that Plaintiff's motion to vacate dismissal as to Defendant, Tulsa Tribune, should be denied. The Court has reviewed the substantive pleadings and finds Plaintiff has failed to state a § 1983 claim against the Tulsa Tribune. To vacate dismissal would therefore be a futile act.

Section 1983 provides that every person who, under color of law, subjects or causes to be subjected, any citizen of the United States or other person within United States jurisdiction, to the deprivation of any constitutionally protected right, shall be liable to the injured party in an action at law or in equity.

Plaintiff must establish two things. First that Defendants' conduct constitutes state action and second that as a result of Defendants' action, Plaintiff has been deprived of a constitutionally protected right. In the case at bar the Court finds that the Plaintiff has established neither of these two requirements. The complaint contains no factual allegations from which this Court could find that the conduct of the Tulsa Tribune's editor and staff is attributable to the state. See Wiggins v. New Mexico State Supreme Court Clerk, 664 F.2d 812 (10th Cir. 1981).

The United States Supreme Court in Paul v. Davis, 424 U.S.

693, 96 S.Ct. 1155 (1976) held that a plaintiff must allege something more than defamation by a state official to establish a cause of action under 42 U.S.C. § 1983. The individual's interest in reputation alone is not a "liberty" or "property" interest protected by the due process clause of the 14th amendment. 424 U.S. at 711-12.

As Plaintiff's claim as to Defendant Tulsa Tribune states only an action for defamation, a state law tort, the complaint alleges no violation of a constitutionally protected right.

The crux of Petitioner's complaint as to Defendant Michael Turpen is that in 1981-1982 Turpen allegedly filed over eighty pleadings containing false information in various state and federal courts and that such false information was subsequently made available to the Tulsa Tribune and to the Pardon and Parole Board, all in violation of Plaintiff's constitutional due process rights.


In support of his motion to dismiss Defendant Michael Turpen argues that Plaintiff has not plead facts supporting a claim under 42 U.S.C. § 1983 because the Attorney General is absolutely immune from civil liability for quasi-judicial actions done in the exercise of his official functions.

The United States Supreme Court in Imbler v. Pachtman, 424 U.S. 431, 96 S.Ct. 984 (1976) held that a prosecutor is absolutely immune from civil liability under § 1983 for initiation of prosecution and presentment of the state's case. The Court reasoned that the fair operation of the judicial system would be weakened by subjecting prosecutors to § 1983 liability.

The scope of this immunity was broadened in Butz v. Economou, 438 U.S. 478, 98 S.Ct. 2894 (1978) where the court held that because the level of civil immunity granted to government officials depends upon the characteristics of their duties and because the functions of certain governmental agency officials are analogous to those of a prosecutor such officials are also entitled to absolute immunity from civil damages liability. Under this rationale absolute immunity has been extended to Attorney Generals and Assistant Attorney Generals as their official duties often include quasi-judicial and prosecutorial functions. Drug Purchase, Inc. v. Dubroff, 485 F.Supp. 887 (S.D.N.Y. 1980); State of Louisiana ex rel Purkey v. Ciolino, 393 F.Supp. 102 (E.D. La. 1975). Insofar as the Attorney General's acts complained of involve his duty as prosecutor, he enjoys absolute immunity from civil liability.

Defendant Turpen also argues that Plaintiff's complaint is insufficient in that it raises no deprivation of a constitutional right. The complaint states only a cause of action for defamation. Therefore no deprivation of a constitutionally protected right has been alleged.

For the above reasons the Court finds that Defendant Michael C. Turpen's motion to dismiss should be and is hereby granted. Plaintiff's motion to vacate dismissal as to Tulsa Tribune is hereby denied. All other motions are hereby denied as moot.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 28 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

MID-STATES AIRCRAFT ENGINES,)
INC.,)

Plaintiff,)

vs.)

No. 82-C-1070-C

TELEDYNE, INC., a Delaware)
corporation, a/k/a Teledyne)
Industries, Inc.,)

Defendant.)

J U D G M E N T

Pursuant to the Order of The Court entered simultaneously herein, Judgment is hereby entered in favor of defendant and against plaintiff on plaintiff's First Cause of Action ("Count I") herein.

IT IS SO ORDERED this 28 day of June, 1985.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM C. STONER,
Plaintiff,

v.

UNITED AIRLINES, INC.,
Defendant.

No. 83-C-19-C

FILED
IN OPEN COURT

JUN 27 1985

ORDER

Jack C. Silver, Clerk
U.S. DISTRICT COURT

This matter having come before the Court on the joint motion of WILLIAM C. STONER, plaintiff ("Stoner"), and UNITED AIRLINES, INC., defendant ("United"), for the approval of their settlement agreement; the Court having been advised of the terms of the parties' settlement understanding as outlined in their agreement entitled: "Release and Settlement Agreement" dated June 27, 1985 at a hearing at which counsel for both parties and the plaintiff were present; the parties having filed a stipulation for the entry of a judgment dismissing this case with prejudice, each party to bear its own costs; and the Court being otherwise fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED, that:

1. The Court accepts and approves the parties' settlement understanding as outlined in the Release and Settlement Agreement dated June 27, 1985 ("Agreement").

2. Following the entry of this Order, United has agreed to pay Stoner an amount in settlement of all of his monetary claims in accordance with the terms of the parties' Agreement. The parties have agreed that the amount of this settlement sum is confidential, but the Court was informed of the settlement amount by information submitted by the parties under seal.

3. Pursuant to this Agreement, Stoner has waived any right he may have for reinstatement or reemployment with UNITED except as otherwise provided under the terms of the Agreement. Stoner has agreed to advise UNITED on or before July 15, 1985 whether he will accept the offer of reinstatement contained in the Agreement; provided, however, that if Stoner fails to notify United or otherwise is unable to satisfy the terms of the reinstatement offer therein, Stoner shall remain in his retirement status and will be barred thereafter from seeking further reinstatement or reemployment with United per the terms of the Agreement.

4. Subject to the amounts paid to Stoner's lawyers by United under the Agreement, the parties shall each bear their own expenses, attorneys' fees and costs of litigation.

5. Stoner has fully released United from any and all monetary or other claims in accordance with the terms of the

Agreement. The parties have acknowledged that they have fully compromised all of their disputes and differences and agree that their Agreement, or any payment thereunder, should not operate or in any way constitute an acknowledgement or admission that United has violated the Age Discrimination in Employment Act or any other federal, state or common law.

6. Per the stipulation of the parties, judgment is hereby entered dismissing this case with prejudice, each party to bear its own costs.

DATED:

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

WILLIAM C. STONER

DATED:

UNITED AIRLINES, INC.

By: James F. DeLoach
One of its Attorneys

DATED:

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JERRY W. SHULTS,)
)
Defendant.)

JUN 26 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-363-E

ORDER OF DISMISSAL

Now on this 25th day of June, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Jerry W. Shults, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

- Entered

FILED

JUN 26 1985

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

JOSEF E. KERCSO, an individual,)
ELISSA T. KERCSO, an individual,)
ADOLPH P. ROSZKOWSKI, an)
individual, DELORES R. ROSZKOWSKI,)
an individual, JOHN H. EWERT, an)
individual, MARGARET J. EWERT,)
an individual, A. FRANCOIS)
DERENDINGER, an individual, LARRY)
H. HOLSWADE, an individual,)
VINCENT F. PICCIONI, an)
individual, DAVID PRESSMAN,)
an individual)

Plaintiffs,)

vs.)

No. 84-C-837-C

NICHOLS PETROLEUM COMPANY, an)
Oklahoma corporation, ORVILLE)
NICHOLS, an individual, RICHARD)
NICHOLS, an individual, LARRY)
MANLEY, an individual, BRIGHT,)
NICHOLS, ZRENDA & DUNN, an)
Oklahoma professional)
corporation, JOHN NICHOLS, an)
individual, STEVEN. M. WOOD, an)
individual, MIDWEST PETROLEUM)
SUPPLY, INC., an Oklahoma)
corporation, and RICARDO I.)
RAMIREZ, an individual.)

Defendants,)

vs.)

DeHAYDU INVESTMENT SECURITIES,)
COAST COUNTY SECURITIES, INC..)

IRENE DeHAYDU, ZOLTAN DeHAYDU,)
and DAVID SIMCHO,)
)
Third Party)
Defendants.)

STIPULATION ^{of} FOR DISMISSAL

It is hereby stipulated by all Plaintiffs and by Defendants Nichols Petroleum Company; Orville Nichols; Richard Nichols; Larry Manley; Bright, Nichols, Zrenda & Dunn; John Nichols; Steven Wood; and Midwest Petroleum Supply, Inc. that the above entitled action be dismissed only as to those claims asserted by Plaintiffs A. Francois Derendinger and Vincent F. Piccioni, without prejudice to their right to re-file the same and without effect to the rights of all other Plaintiffs to fully prosecute all claims asserted herein.

DATED ^{June} ~~May~~ 12, 1985.

Respectfully submitted,

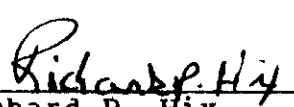
OWENS & MCGILL, INC.

By


Ben K. McGill #005989
Dona K. Broyles #010222

1606 First National Bank Building
Tulsa, Oklahoma 74103
(918) 587-0021

ATTORNEYS FOR PLAINTIFFS


Richard P. Hix
Doerner, Stuart, Saunders, Daniel & Anderson
ATTORNEYS FOR DEFENDANTS JOHN NICHOLS AND BRIGHT & NICHOLS



Jon R. Running
Forsman & Running
ATTORNEYS FOR STEVEN WOOD


Michael L. McHugh



Dwayne C. Pollard
Robert L. Battaglia
CO-COUNSEL FOR DEFENDANTS RICHARD NICHOLS, ORVILLE NICHOLS,
NICHOLS PETROLEUM COMPANY, LARRY MANLEY, AND MIDWEST PETROLEUM
SUPPLY, INC.

0614c/dkb
5-14-85/clh

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 26 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

FLOYD WESLEY OWENS,

Plaintiff,

vs.

CITY OF PRYOR CREEK, OKLAHOMA,
et al.,

Defendants.

No. 83-C-879-C

O R D E R


Now before the Court for its consideration is the Motion of defendants Backwater, Moon, Coatney and Batt for Summary Judgment, filed on March 28, 1985. Plaintiff was given an extension of time until April 28, 1985 in which to respond to the Motion for Summary Judgment and to supplement his earlier responses. The Court has no record of a response to this motion from plaintiff. Rule 14(a) of the Local Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) Briefs. Each motion, application and objection filed shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within ten (10) days after the filing of the motion or objection, and any reply memoranda shall be filed within ten (10) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Therefore, in that plaintiff has failed to comply with Local Rule 14(a) and no responsive pleading has been filed to date herein, the Court concludes that plaintiff has waived any objection to said motion and has confessed the matters contained therein.

Accordingly, it is the Order of the Court that the Motion of defendants Backwater, Moon, Coatney, and Batt for Summary Judgment should be and hereby is sustained.

IT IS SO ORDERED this 27 day of June, 1985.


H. DALE COOK
Chief Judge, U. S. District Court

Entered

FILED

JUN 26 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DORIS D. PALMER and SUSANNE C. PALMER,)
)
Plaintiffs,)
)
v.)
)
HEINOLD COMMODITIES, INC.,)
)
Defendant.)

No. 85-C-229-E

ORDER OF DISMISSAL

Now on this 25th day of June, 1985, it appearing to the Court that
this matter has been compromised and settled, this case is herewith dismissed
with prejudice to the refiling of a future action.

James C. Silver
United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 26 1985

RIFFE PETROLEUM COMPANY)
and SUBSIDIARIES,)
)
 Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
 Defendant.)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Civil No. 85-C-95-E

ORDER DISMISSING THIS ACTION WITHOUT PREJUDICE

Pursuant to a Motion To Voluntarily Dismiss Without Prejudice filed by the plaintiff herein, the Court is of the opinion that the motion should be granted, and it is therefore:

ORDERED that this action be dismissed without prejudice to the plaintiff to refile its Complaint at a subsequent date.

Entered this 25th day of June, 1985.

S/ JAMES O. ELSON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 26 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY E. JACKSON,

Defendant.

CIVIL ACTION NO. 85-C-4-C

AGREED JUDGMENT

This matter comes on for consideration this 26 day
of June, 1985, the Plaintiff appearing by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney, and the Defendant, Anthony E. Jackson, appearing pro
se.

The Court, being fully advised and having examined the
file herein, finds that Defendant, Anthony E. Jackson, was served
with Summons and Complaint. The Defendant has not filed his
Answer but in lieu thereof has agreed that he is indebted to the
Plaintiff in the amount of \$4,510.00, plus the accrued interest
of \$2,639.47 as of November 18, 1984, plus interest at the rate
of 7 percent per annum from November 18, 1984, until judgment,
plus interest thereafter at the legal rate from date of judgment
until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that
the Plaintiff have and recover judgment against the Defendant,
Anthony E. Jackson, for the principal sum of \$4,510.00, plus the

accrued interest of \$2,639.47 as of November 18, 1984, plus interest at the rate of 7 percent per annum from November 18, 1984, until judgment, plus interest thereafter at the current legal rate of 170 percent from date of judgment until paid, plus costs of this action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney



PETER BERNHARDT
Assistant U.S. Attorney



ANTHONY E. JACKSON

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 26 1985

KENNETH R. HARTLEY,

Plaintiff,

v.

LT. DANIEL CHERRY, et al.,

Defendant,

84-C-685-C

Jack C. Silver, Clerk
U.S. DISTRICT COURT

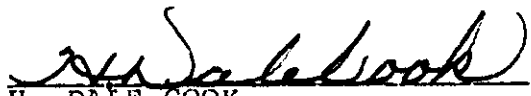
O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed June 13, 1985 in which the Magistrate recommends that Defendants' Motion to Dismiss be sustained. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues presented, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that Defendants' Motion to Dismiss is sustained.

IT IS SO ORDERED this 26th day of June, 1985.


H. DALE COOK
CHIEF JUDGE

Entitled

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA **FILED**

JUN 26 1985

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
RUBEN W. LAMB,)
)
Defendant.)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-83-E

DEFAULT JUDGMENT

This matter comes on for consideration this 25th day of June, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Ruben W. Lamb, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Ruben W. Lamb, was served with Alias Summons and Complaint on April 30, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Ruben W. Lamb, for the principal sum of \$1,245.00, plus accrued interest of \$828.81 as of January 5, 1985, plus interest on the principal sum of \$1,245.00 at 7 percent from January 5, 1985, until

judgment, plus interest thereafter at the current legal rate of 7.70 percent from date of judgment until paid, plus costs of this action.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 26 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

EDDIE THOMPSON,

Plaintiff,

v.

CITIES SERVICE OIL AND GAS
CORPORATION,

Defendant.

Case No. 84-916-E

JUDGMENT

Pursuant to the Order of the Court entered simultaneously herein, judgment is hereby entered in favor of the Defendant, Cities Service Oil and Gas Corporation and against the Plaintiff, Eddie Thompson, with costs assessed against the Plaintiff.

It is so ordered this 25th day of June, 1985.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BOBBIE ALLEN GREEN,

Plaintiff,

AND

STATE INSURANCE FUND,

Third Party
Plaintiff,

vs.

WARREN LEONARD GRITTEN, et al.,

Defendants.

Entitled
F I L E D

JUN 26 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 83-C-982-E


JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 25th day of June, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

JUN 26 1985

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

PUMPJACK II,

Plaintiff,

vs.

No. 83-C-655-E

PHOENIX ENERGY CORP., et al.,

Defendants.


JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 25th day of June, 1985.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT JUN 26 1985

FOR THE NORTHERN DISTRICT OF OKLAHOMA Jack C. Silver, Clerk
U.S. DISTRICT COURT

TAMMIE LYNN FURGASON,

Plaintiff,

vs.

INDIAN ELECTRIC
COOPERATIVE, INC., an
Oklahoma Corporation,

Defendant.

Case No. 84-C-127-~~F~~

LEE W. FURGASON,

Plaintiff,

vs.

INDIAN ELECTRIC
COOPERATIVE, INC., an
Oklahoma Corporation,
and AMES OIL AND GAS CO.,
INC., a Texas
Corporation,

Defendants.

Case No. 82-C-991-E

Consolidated

ORDER

NOW on this 16th day of May, 1985, came on for hearing before me, the undersigned District Judge of the United States District Court for the Northern District of Oklahoma, the Motion to Dismiss filed by Defendant Indian Electric Cooperative, Inc.

The Court after reviewing the Briefs filed by counsel for the parties and reviewing the Affidavits of various witnesses filed in this matter and after hearing testimony of certain witnesses produced by both parties on May 16, 1985, and after hearing argument of counsel, finds that the Defendant's Motion To Dismiss should be and the same is hereby sustained.

Case No. 84-C-127-~~M~~^F and Case No. 82-C-991-E are hereby dismissed because of the lack of Federal Jurisdiction over the parties herein.


S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



STAN MONROE
ATTORNEY FOR PLAINTIFF



DONALD G. HOPKINS
ATTORNEY FOR DEFENDANT

Entitled

Jack C. Silver, Clerk
U.S. DISTRICT COURT

United States District Judge

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIE L. WILLIAMS,

Defendant.

JUN 26 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-340-C

ORDER OF DISMISSAL

Now on this 26 day of June, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Willie L. Williams have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Willie L. Williams, be and is dismissed without prejudice.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JESSE COCHRAN and RONDA
COCHRAN, husband and wife; and
their minor son, KEITH COCHRAN,
Plaintiffs,
v.
CITY OF TULSA, OKLAHOMA,
a Municipal Corporation;
JAMES W. KARR, a Police Officer
employed by said City; and
PAUL HAGGERTY, a Police Officer
employed by said City,
Defendants.

No. 85-C-60-B

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

JUN 25 1985

FILED

O R D E R

This matter comes before the Court on defendant City of Tulsa, Oklahoma's motion to dismiss certain issues and allegations from plaintiff's first amended complaint. For the reasons set forth below, the motion is granted.

Plaintiffs bring this action pursuant to 42 U.S.C. §1983 for violation of their constitutional rights stemming from an incident of alleged police brutality which occurred on November 29, 1983. Plaintiffs Jesse Cochran and Rhonda Cochran claim they were assaulted and battered when they were forced at gunpoint off property upon which they allegedly had a right to be.

Defendant City of Tulsa moves to dismiss certain aspects of plaintiffs' complaint and asks the Court to (1) strike the

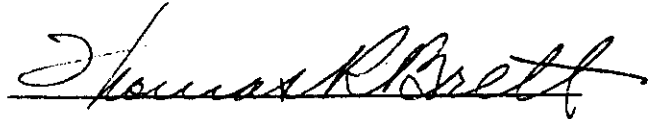
plaintiffs' claim for punitive damages against the City and (2) enter an order limiting plaintiffs' claim against the City to several, rather than joint and several, liability.

The City of Tulsa is clearly immune from punitive damages under 42 U.S.C. §1983. Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981). Plaintiff's prayer under §1983 for punitive damages against the City must therefore be stricken.

Plaintiffs present a single cause of action against the City of Tulsa and individual defendant police officers. The City urges plaintiffs are seeking recovery of damages from the City upon a theory of respondeat superior, given the way plaintiffs' complaint is structured. In Monell v. Dept. of Social Services of New York, 436 U.S. 658 (1978), the Supreme Court held that a local government may not be sued under §1983 for injuries inflicted solely by its employees or agents. "Instead, it is when the execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under §1983." The City of Tulsa cannot be held vicariously responsible for the acts of alleged individual misconduct. However, plaintiffs also allege the individual police officers acted consistently with an established policy or custom of the Tulsa Police Department. This alternative allegation constitutes an alternative theory of liability which might give rise to several liability among defendants.

Premises considered, the City's motion is granted. Plaintiffs' prayer for punitive damages on plaintiffs' \$1983 cause of action against the City is hereby stricken. Plaintiffs' claim of vicarious liability against the City for the conduct of the individual defendants is also hereby stricken.

IT IS SO ORDERED this 25th day of June, 1985.

A handwritten signature in cursive script, reading "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 25 1985

UTICA NATIONAL BANK & TRUST CO.,)
a national banking association,)
)
 Plaintiff,)
)
vs.)
)
CALVIN RANSOM, et al.,)
)
 Defendants.)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 85-C-⁵³⁷~~573~~-C

NOTICE of DISMISSAL WITHOUT PREJUDICE

Plaintiff, Utica National Bank & Trust Co., does hereby
dismiss without prejudice the claim alleged herein against
Circa Associates, an unincorporated association composed of
Maurice Frank and Richard F. Neubauer, and the claims alleged
against Steve Rippon and Marva Rippon.



Charles V. Wheeler
Oliver S. Howard
GABLE & GOTWALS, INC.
20th Floor, Fourth National Bank
Tulsa, OK 74119
(918) 582-9201

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack R. Butz,

Plaintiff,

vs.

No. 85-C-430-C

JAMES HINES, MARK ETCHART,
EDWIN SWANSON, D.C. BECKMAN,
RAY PEHLKE, BUELL HAYWARD,
AND TOM MARKLE, jointly and
severally,

Defendants.

FILED
JUN 25 1985
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Now before the Court for its consideration is the motion of defendants James Hines, Mark Etchart, Edwin Swanson, D. C. Beckman, Ray Pehlke, Buell Hayward, and Tom Markle to dismiss or in the alternative, to transfer. The plaintiff Jack R. Butz's having responded, the matter is now ready for this Court's determination.


Plaintiff, a resident of the Northern District of Oklahoma, brought suit against defendants for breach of contract. Defendants are residents and citizens of Montana, the occurrence giving rise to the complaint took place in Montana, and anticipated witnesses, allegedly essential to the defense of the action, are residents of Montana, beyond the reach of process, and unwilling to voluntarily attend proceedings in Oklahoma.

Defendants' motion requests dismissal of the action for lack of personal jurisdiction on the basis of insufficient due process minimum contacts with this forum. In the alternative, defendants request this Court transfer the matter to the United States District Court for

Montana, pursuant to 28 U.S.C. §1404. Plaintiff's response to the motion contains his request that the Court exercise its statutory discretion and order this case be transferred to the Montana federal court.

It is therefore ordered, upon motion of the defendants and by consent thereto of plaintiff, that this action should be and hereby is transferred to the United States District Court for Montana for any and all further proceedings.

IT IS SO ORDERED this 25th day of June, 1985.


H. DALE COOK
Chief Judge, U. S. District Court

entered
FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA JUN 24 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

LARRY GASS,)
)
Plaintiff,)
)
vs.) No. 85-C-196-C
)
SOUTHWESTERN BELL TELEPHONE)
COMPANY, a Missouri)
corporation, et al.,)
)
Defendants.)

O R D E R

Now before the Court for its consideration is the motion of defendant Southwestern Bell Telephone Company for summary judgment, said motion filed April 29, 1985. The plaintiff Larry Gass' having responded, the matter is now ready for this Court's determination.

Plaintiff's amended petition alleges defendant libeled him by publishing and circulating a defamatory publication, Oklahoma Telephone Times, in which the following allegedly libelous article appeared in the December 3, 1983 edition:

Tulsa Linked to Cable Cut

The owner of a Tulsa security service agency has been linked to the New Year's Eve cable cut at Tulsa's National central office and to a succeeding \$1.3 million drug theft.

Larry Gass, owner of Tulsa Security Patrol, was identified by an alleged accomplice as the man who told the others which lines to cut in the National central office cable vault, according to Tulsa

police authorities. Fourteen feeder cables were severed by a chainsaw, isolating more than 30,000 Tulsa customers and shutting down burglar alarm systems to dozens of Tulsa businesses.

Shortly after the cables were cut, thieves broke into the Bergen Brunswig Drug Co. warehouse and stole \$1.3 million in narcotics, the largest drug theft in state history.

The source of information for the article is a November 21, 1983, guilty plea hearing before the Honorable James O. Ellison, United States District Court, Northern District of Oklahoma. Mr. Jerald Richard Goller, during the course of his pleading guilty to violating 18 U.S.C. §§1362 and 2 and 21 U.S.C. §841(a)(1), stated the following in open court in response to the Court's request, "Tell the Court in 117 briefly how you went about committing the offense charged:"

THE DEFENDANT: At approximately on or about midnight Larry Gass and myself entered the International Exchange on 41st Street. Mr. Gass pointed out which cables I should cut. We left the building. That was the extent of his participation that evening. Mr. Norris and I entered the building. I pointed out the cables to Mr. Norris. Mr. Norris cut them with a chain saw. We left that premise and went to, as I remember the drug warehouse, Bergen Brunswig, whereupon we broke into that warehouse. At some point in time an

employee entered the building. The employee was induced to open the vault. The drugs were taken. The employee was handcuffed. We left the building at that point and shortly thereafter each of us split up.

The dispositive issue before the Court is whether the defendant as publisher of a newspaper is protected, as a matter of law, from any liability to plaintiff Gass by virtue of a common law or statutory privilege.

The common law standard in Oklahoma, applicable to this situation, is that a private person, such as plaintiff Gass, may recover for defamation by the news media if the news media fails to use ordinary care. The Oklahoma Supreme Court has defined "ordinary care" in Martin v. Griffin Television, Inc., 549 P.2d 85 (Okla. 1976), in which the court held that it is that degree of care which other ordinarily prudent persons engaged in the same kind of business commonly use under similar circumstances.

The legislature has also spoken regarding privileged communications or publications in 12 O.S. 1981 §1443.1, which states in pertinent part:

A. A privileged publication or communication is one made:

. . . .

Third. By a fair and true report of any legislative or judicial or other proceeding authorized by

law, or anything said in the
course thereof, and any and all
expressions of opinion in regard
thereto, and criticisms thereon

. . . .

B. No publication which under this
section would be privileged shall be
punishable as libel.

Upon consideration of the transcript of proceedings
before Judge Ellison and the resulting news item in de-
fendant's paper, the Court finds, as a matter of law, that
defendant used ordinary care as defined by the Oklahoma
Supreme Court. Defendant is also protected by the statutory
privilege in that it embodied a fair and true report of the
judicial proceeding before Judge Ellison in its article in
the December 3, 1983 edition of the Oklahoma Telephone Times.

Defendant's actions being privileged as matter of law,
the motion for summary judgment is granted, and plaintiff's
action should be and hereby is dismissed with prejudice.

IT IS SO ORDERED this 20th day of June, 1985.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CHARLES F. ROBERSON,

Plaintiff,

vs.

CIV. NO. 83-C-533-B

ROBERT FULTON, in his official
capacity as Director of Human
Services, Oklahoma Department
of Human Services; et. al.,

Defendant.

FILED


JUN 24 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

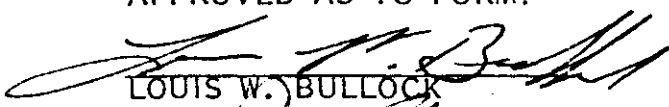
JUDGMENT

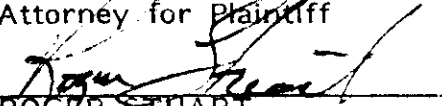
In accord with the Settlement Agreement entered into by the parties herein, the Court hereby enters Judgment for supplemental attorney fees in the amount of \$2,443.75, in favor of the Plaintiff's attorneys, Louis W. Bullock and Patricia W. Bullock, and against the Defendants, Robert Fulton, in his official capacity as Director of Human Services, Oklahoma Department of Human Services, and Hershel E. Daney. The Court further awards post-judgment interest on the attorney fee award at the statutory rate of 7.70% per annum.

Entered this 24 day of June, 1985.


JUDGE THOMAS R. BRETT
U. S. DISTRICT JUDGE

APPROVED AS TO FORM:


LOUIS W. BULLOCK
Attorney for Plaintiff


ROGER STUART
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 24 1985

COUNTRY VIEW, INC.,

Plaintiff,

v.

DANIEL SOMMERHAUSER,

Defendant/Third
Party Plaintiff,

v.

BROWN & WILLIAMSON TOBACCO
CORPORATION,

Third-Party Defendant.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Case No. 85-C-44-B

O R D E R

This matter comes before the Court on plaintiff's response to petition for removal which the Court treats as a motion to remand. For the reasons set forth below, plaintiff's motion is sustained.

Plaintiff filed this action in state district court for Tulsa County, Oklahoma, alleging breach of a medical services contract. Plaintiff alleges defendant is indebted to plaintiff in the sum of \$5,407.00 for services rendered in November and December, 1982. Defendant Daniel Sommerhauser ("Sommerhauser") filed a third-party claim against Batus, Inc. ("Batus") for breach of Batus' obligation to pay hospital expenses under a policy of coverage between Batus and Sommerhauser's employer, Brown & Williamson Tobacco Corporation ("Brown & Williamson").

On January 16, 1985, Batus removed the action to this Court on the ground the Court has jurisdiction over the matter under the Employee Retirement Security Act ("ERISA"), 29 U.S.C. §1001 et seq. Third-party defendant contends the medical and hospital coverage referred to in the third-party petition is an "employee welfare benefit plan" within the meaning of §1002(1) of ERISA. Federal courts have jurisdiction over civil actions brought by beneficiaries under such employee welfare benefit plans to recover benefits due them under the terms of their plans. 29 U.S.C. §1132.

On March 12, 1985, plaintiff filed a "response to petition for removal" objecting to the removal on the grounds that (1) Oklahoma District Court has concurrent jurisdiction over such matters, pursuant to 19 U.S.C. §1132(e)(1); (2) on December 29, 1982, Sommerhauser executed an assignment to plaintiff of all insurance benefits to which Sommerhauser may be entitled; and (3) that the plan in question is not a "pension plan" as defined by §1002(2) of ERISA.

On April 15, 1985, the Court substituted Brown & Williamson Tobacco Corporation for Batus as the proper third-party defendant herein. All parties consented thereto.

The arguments posed by the parties miss the central jurisdictional issue presented herein: whether third-party defendant may remove the entire action to federal court. It is clear that concurrent jurisdiction of an ERISA action in both state and federal court does not preclude removal. McConnell v.

Marine Engineers Beneficial Association, 526 F.Supp. 770 (N.D.Cal. 1981), Routh v. City of Parkville, 580 F.Supp. 876 (W.D.Mo. 1984). It is also clear that the plan herein is an "employee welfare benefit plan" within the meaning of 29 U.S.C. §2001(1)(A). However, the parties fail to address whether the third-party complaint serves as a basis for removal. The underlying action between plaintiff and defendant is one for breach of contract for payment of medical services, clearly a state claim. There is no diversity between plaintiff and defendant and the jurisdictional amount requirement is unmet. The third-party action between Sommerhauser and Brown & Williamson is one for employee benefits arising under ERISA.

Some courts permit removal under §1441(c) by a third-party defendant, of a separate and independent third-party claim which could be removed if sued on alone. This takes the entire action into the federal court. The district court may, in its discretion, remand all matters not otherwise within its original jurisdiction.

Other courts do not permit removal on the basis of a third-party claim, although it would have been removable by the defending party if the claim had been sued on alone. These courts limit removal under §1441(c) to a party defending against claims which have been joined by the plaintiff. Under this view, a third-party defendant is not a defendant within the meaning of §1441. 1A Moore's Federal Practice ¶0.167[10]; 29 Fed.Proc., LEd §69.38.

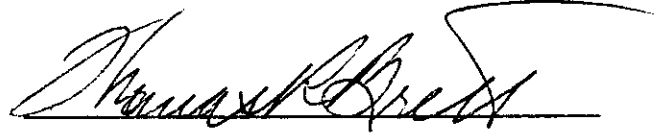
Although Sommerhauser allegedly executed an assignment to plaintiff of all insurance benefits, Sommerhauser's claim against Brown & Williamson has not been joined by plaintiff. The parties have not agreed that Sommerhauser has no claim against Brown & Williamson as a result of the alleged assignment, making plaintiff the real party in interest on the third-party claim.

The third-party claim must be "separate and independent" under §1441(c) to create removal jurisdiction in this court. Plaintiff's action against defendant is one for breach of contract, for recovery of monies owed for medical services. Third-party plaintiff's action is one for breach of third-party defendant's obligation to pay those medical expenses under an ERISA plan. The claims are dissimilar in the sense that one is an action for breach of contract, the other for employee benefits under an ERISA plan. The two actions are tied, however, in the sense that Sommerhauser seeks judgment against Brown & Williamson for any sums he may be liable to plaintiff for as a result of the original action. The third-party action is therefore dependent on the outcome of the main action. The actions are therefore not separate and independent.

Removal must be denied when the third-party claim does not meet the critical "separate and independent" test. 1A Moore's Federal Practice ¶0.167[10]. Parks v. Physicians & Surgeons Building Corporation, 324 F.Supp. 883 (W.D.Okla. 1971). The third-party claim, basically an indemnity action, is not separate and independent of a nonremovable action. Id. at 885.

Plaintiff's motion to remand is granted and the case is remanded to the Tulsa County District Court from which it was improvidently removed.

IT IS SO ORDERED this 21ST day of June, 1985.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

GLENN E. JACKSON: and)
CHARLENE JACKSON,)

Defendants.)

FILED

JUN 24 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 84-C-650-B

DEFICIENCY JUDGMENT

Now on this 24th day of June, 1985, there came

on for hearing the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment herein, said Motion being filed on June 21, 1985, and a copy of said Motion being mailed to Glenn C. Jackson and Charlene Jackson, Post Office Box 100, Pratt, Kansas 67124. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendants, Glenn C. Jackson and Charlene Jackson, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on December 17, 1984, in favor of Plaintiff United States of America and against Defendants Glenn E. Jackson and Charlene Jackson, with interest and costs to date of sale is \$29,113.77.

The Court further finds that the market value of the real property at the time of sale was \$22,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered December 17, 1984, for the sum of \$18,787.50.

The Court further finds that Plaintiff United States of America is accordingly entitled to a deficiency judgment against the Defendants, Glenn E. Jackson and Charlene Jackson as follows:

Principal balance as of April 22, 1985. . . .	\$23,717.49
Interest	4,577.60
Late charges	207.48
Appraisal	230.00
Management Broker Fees	260.00
Advertisement fee for sale	<u>121.20</u>
TOTAL	\$29,113.77
Less the appraised value	<u>22,000.00</u>
DEFICIENCY	\$ 7,113.77

plus interest on said deficiency judgment at the legal rate of 7.70 percent per annum from date of judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America have and recover from Defendants Glenn E. Jackson and Charlene Jackson a deficiency judgment in the amount of \$7,113.77, plus interest at the legal rate of 7.70 percent per annum on said deficiency judgment from date of judgment until paid.


UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE JUN 24 1985
NORTHERN DISTRICT OF OKLAHOMA

JACK C. SILVER, CLERK
U.S. DISTRICT COURT


LARRY GASS,)
)
Plaintiff,)
)
vs.) No. 85-C-196-C
)
SOUTHWESTERN BELL TELEPHONE)
COMPANY, a Missouri)
corporation, et al.,)
)
Defendants.)

J U D G M E N T

This matter came on before the Court on defendant's motion for summary judgment, and the issue having been duly considered and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that defendant's motion for summary judgment is hereby granted, that plaintiff's complaint be dismissed with prejudice, and that the parties bear their own costs of action.

IT IS SO ORDERED this 20 day of June, 1985.


H. DALE COOK
Chief Judge U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

EDG ENGINEERING, INC., and
ENGINEERING DESIGN GROUP, INC.,

Defendants.

No. 84-C-674-~~B~~^A **FILED**

JUN 24 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CONSENT DECREE

The plaintiff, the Equal Employment Opportunity Commission (hereinafter the "Commission"), filed the Complaint on August 1, 1984, alleging a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. (hereinafter "Title VII") and of Sections 6(d), 16(c) and 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§206(d), 216(c) and 217 (hereinafter, the "Equal Pay Act"). The Complaint alleged that Title VII and the Equal Pay Act were violated by paying females wages lower than the wages of male employees, and in classifying females at a lower level than male employees.

The defendants are Oklahoma corporations having their principal places of business in Tulsa County, Oklahoma. The Complaint alleged that the defendants committed the violations in the State of Oklahoma and in the Northern District of Oklahoma. Defendants denied in their Answer that any violations occurred. This decree is designed to resolve the disputes as framed by the pleadings between the parties.

This decree, issued with the mutual consent of the parties, shall not constitute an adjudication on the merits of the case and shall not be construed as an admission by the defendants of any discriminatory practice or as a waiver by the Commission of any contentions of discrimination. In consideration of the mutual promises of the consent decree, the plaintiff and the defendants agree as follows:

1. This Court has jurisdiction of the subject matter of this action and of the parties. Venue is proper. All administrative prerequisites have been met.

2. By entering into this consent decree, neither the plaintiff nor the defendants waive any contentions regarding the allegations on the merits of this cause of action. The defendants do not admit that there has been a violation of Title VII or of the Equal Pay Act. It is expressly understood that this decree may not be used by any person or entity who is not a party to this suit as any evidence of any violation of any employment practice by these defendants. The defendants will not challenge the validity of this consent decree, nor defend against a proceeding alleging failure to comply with this consent decree, upon the grounds that they did not commit the practices of discrimination alleged in the Complaint.

3. The defendants will raise the wages of females presently employed in the job positions covered by the Complaint of engineering group leader, engineering design, design drafting, drafting clerk, and drafting to equal those of similarly situated males. Henceforth, all new employees in said positions shall have the same starting wage regardless of the sex of the employee. The defendants shall submit copies of payroll documents for each employee in said positions to the plaintiff at the expense of the defendants within twenty (20) days of the entry of this decree and at the end of the first and second years of entry of this decree to verify compliance with it.

4. The defendants agree to pay the following gross amounts: (1) to Charlotte Gelonek, \$2,753.73; (2) to Constance Phillips, \$1,130.78; (3) to Melody Noel, \$674.88; (4) to Mary Baker, \$763.60; and (5) to Deborah Krutsinger, \$257.00. The defendants shall withhold and pay from that amount federal withholding tax in the amount of 20%, Oklahoma income tax, and F.I.C.A. taxes as required by law. The remaining amount shall be paid by check to the order of the respective female and shall be presented to the Commission for forwarding. A statement of amounts withheld shall accompany the check.

5. Upon payment of the agreed upon amount, the Commission will obtain a release from each of the above-named females and forward the releases to the defendants. A copy of the releases is attached.

6. The Commission agrees that after the payment to the above-named females, it will file a copy of the releases in this action which will be determined to be a final disposition of this cause of action. The releases shall also be subject to the non-admission provisions contained in this decree. The Commission agrees to release its claims against the defendants of violations of the Equal Pay Act and Title VII regarding charge 083-82-0534, and will forego pursuance of an adjudication of the issues in the Complaint of August 1, 1984 in this cause of action. The Commission does not waive, in any manner, its rights to a cause of action under any other charges against defendants at present or in the future, nor its right to enforce the terms of this decree.

7. The terms of this consent decree are binding upon any successors, assigns or trustees of the defendants.

8. The terms of this consent decree do not bind any other persons or actions except for the above-named females and the parties in this above-entitled cause of action.

9. Each party shall bear its own costs of litigation and attorneys' fees.

WHEREFORE, the foregoing is hereby ORDERED AND DECREED this 24 day of June, 1985.

(Signed) H. Dale Cook

Judge, United States District Court for
the Northern District of Oklahoma

FOR EDG ENGINEERING, INC. and ENGINEERING DESIGN GROUP, INC.:

5-17-85
Date

Ronald L. Setser
Signature
VICE - PRES.
Title

5-17-85
Date

Ronald L. Setser
Signature
VICE - PRES.
Title

5-17-85
Date

J. Daniel Morgan
J. Daniel Morgan
Gable & Gotwals
Attorney for Defendants

FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

6-12-85
Date

Philip Sklover
Philip Sklover, Associate General
Counsel
Joseph H. Mitchell
Regional Attorney

6/12/85
Date

6/12/85
Date

Tela L. Gatewood
Supervisory Trial Attorney (Acting)

6/12/85
Date

Tela L. Gatewood
Tela L. Gatewood
Senior Trial Attorney

RELEASE OF MARY BAKER

The undersigned, Mary Baker, hereby certifies that she has received the amount of \$531.86 , which represents wages in the amount of \$763.60 minus lawful deductions of federal withholding tax, Oklahoma income tax and F.I.C.A. The undersigned releases and waives all claims against EDG Engineering, Inc. and Engineering Design Group, Inc. arising solely under the above-entitled cause of action filed by the Equal Employment Opportunity Act of 1938, as amended, 29 U.S.C. §§206(d) and 216(b) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. This payment is not an admission of any violation by EDG.

Signed this ____ day of _____, 1985.

MARY BAKER

STATE OF _____)
COUNTY OF _____) ss:

Subscribed and sworn to before me this ____ day of ____, 1985.

My commission expires:

RELEASE OF MELODY NOEL

The undersigned, Melody Noel, hereby certifies that she has received the amount of \$473.87 , which represents wages in the amount of \$674.88 minus lawful deductions of federal withholding tax, Oklahoma income tax and F.I.C.A. The undersigned releases and waives all claims against EDG Engineering, Inc. and Engineering Design Group, Inc. arising solely under the above-entitled cause of action filed by the Equal Employment Opportunity Commission pursuant to the Equal Pay Act of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§206(d) and 216(b) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. This payment is not an admission of any violation by EDG.

Signed this ____ day of _____, 1985.

MELODY NOEL

STATE OF _____)
COUNTY OF _____) ss:

Subscribed and sworn to before me this ____ day of _____, 1985.

My commission expires:

The undersigned, Constance Phillips, hereby certifies that she has received the amount of \$787.15, which represents wages in the amount of \$1,130.78 minus lawful deductions of federal withholding tax, Oklahoma income tax and F.I.C.A. The undersigned releases and waives all claims against EDG Engineering, Inc. and Engineering Design Group, Inc. arising solely under the above-entitled cause of action filed by the Equal Employment Opportunity Commission pursuant to the Equal Pay Act of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§206(d) and 216(b) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. This payment is not an admission of any violation by EDG.

CONSTANCE PHILLIPS

STATE OF _____)
COUNTY OF _____) ss:

Subscribed and sworn to before me this ____ day of ____, 1985.

My commission expires:

The undersigned, Charlotte Gelonek, hereby certifies that she has received the amount of \$1,864.29 , which represents wages in the amount of \$2,753.73 minus lawful deductions of federal withholding tax, Oklahoma income tax and F.I.C.A. The undersigned releases and waives all claims against EDG Engineering, Inc. and Engineering Design Group, Inc. arising solely under the above-entitled cause of action filed by the Equal Employment Opportunity Commission pursuant to the Equal Pay Act of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§206(d) and 216(b) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. This payment is not an admission of any violation by EDG.

CHARLOTTE GELONEK

STATE OF _____)
COUNTY OF _____) ss:

Subscribed and sworn to before me this _____ day of _____, 1985.

My commission expires:

The undersigned, Deborah Krutsinger, hereby certifies that she has received the amount of \$186.23 , which represents wages in the amount of \$257.00 minus lawful deductions of federal withholding tax, Oklahoma income tax and F.I.C.A. The undersigned releases and waives all claims against EDG Engineering, Inc. and Engineering Design Group, Inc. arising solely under the above-entitled cause of action filed by the Equal Employment Opportunity Commission pursuant to the Equal Pay Act of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§206(d) and 216(b) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. This payment is not an admission of any violation by EDG.

DEBORAH KRUTSINGER

Subscribed and sworn to before me this ____ day of ____, 1985.

My commission expires:

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,
vs.
ROBERT E. WALDROP,
Defendant.

FILED

JUN 24 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-272-B

DEFAULT JUDGMENT

This matter comes on for consideration this 24 day
of JUNE, 1985, the Plaintiff appearing by Layn R.

Phillips, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney, and the Defendant, Robert E. Waldrop, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendant, Robert E. Waldrop, acknowledged
receipt of Summons and Complaint on April 26, 1985. The time
within which the Defendant could have answered or otherwise moved
as to the Complaint has expired and has not been extended. The
Defendant has not answered or otherwise moved, and default has
been entered by the Clerk of this Court. Plaintiff is entitled
to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the
Plaintiff have and recover judgment against Defendant, Robert E.
Waldrop, for the principal sum of \$2,713.82, plus accrued
interest of \$1,457.86 as of February 15, 1985, plus interest on
the principal sum of \$2,713.82 at 7 percent from February 15,

1985, until judgment, plus interest thereafter at the current legal rate of 7.70 percent from date of judgment until paid, plus costs of this action.


UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RALPH & BETTY GRABEL,
Plaintiffs,
vs.
FORD MOTOR CO.,
Defendant.

Case No. 84-C-843-E

FILED

JUN 21 1984

Jack C. Silver, Clerk
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL

COME NOW the parties and stipulate to the dismissal of
the above styled and numbered cause.

FRASIER & FRASIER

By: 

Steven R. Hickman OBA#4172
1700 Southwest Boulevard
P. O. Box 799
Tulsa, OK 74101
(918) 584-4724
ATTORNEY FOR PLAINTIFFS

BOESHCE, MCDERMOTT & ESKRIDGE

By: 

R. David Whitaker
320 South Boston, S.1300
Tulsa, OK 74103
ATTORNEY FOR DEFENDANT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 21 1985

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOMMY LEE EDMONSON,

Defendant.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 84-C-728-E

NOTICE OF DISMISSAL

COMES NOW the United States of America by
Layn R. Phillips, United States Attorney for the Northern
District of Oklahoma, Plaintiff herein, through Nancy Nesbitt
Blevins, Assistant United States Attorney, and hereby gives
notice of its dismissal, pursuant to Rule 41, Federal Rules of
Civil Procedure, of this action without prejudice. Plaintiff
would advise the Court that on June 10, 1985, Tommy Lee Edmonson
brought his account current and that his note and mortgage have
been reinstated.

Dated this 21st day of June, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 21st day of June, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Tommy Lee Edmonson, 24 East 63rd Street North, Tulsa, Oklahoma 74126.

Mary Nesbitt Blevins
Assistant United States Attorney

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA **F I L E D**

JUN 21 1985

RAY M. LEAGUE, NORMA L.)
LEAGUE and ZELDA M.)
ROBERSON,)
)
Plaintiffs,)
-vs-)
)
E. F. HUTTON & COMPANY, INC.,)
a Delaware corporation,)
and ROBERT T. KINDER,)
an individual,)
)
Defendants.)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 83-C-889-E

of
**JOINT STIPULATION FOR
DISMISSAL WITH PREJUDICE**

COMES NOW the Plaintiffs, Ray M. League, Norma L. League, and Zelda M. Roberson, and Defendants, E. F. Hutton & Company, Inc. and Robert T. Kinder, and jointly stipulate and agree that this cause be dismissed with prejudice, each party to bear his, her, or its own costs, expenses, and attorneys' fees.

John S. Athens

John S. Athens
Katie J. Colopy
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711
ATTORNEYS FOR PLAINTIFFS,
RAY M. LEAGUE, NORMA L. LEAGUE,
and ZELDA M. ROBERSON



Ronald N. Ricketts
Jeffrey W. Otto
GABLE & GOTWALS
20th Floor
Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201
ATTORNEYS FOR DEFENDANT,
E. F. HUTTON & COMPANY, INC.



John B. Jarboe
JARBOE, KEEFER & SWINSON
1810 Mid-Continent Tower
Tulsa, Oklahoma 74103
(918) 582-6131
ATTORNEYS FOR DEFENDANT,
ROBERT T. KINDER

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 20 1985

JACK D. SUMNER, CLERK
U.S. DISTRICT COURT

ABLE RENTAL COMPANY, INC.,)
DARLENE ROACH and)
MID-CONTINENT CASUALTY COMPANY,)

Plaintiffs,)

vs.)

TED HOYER & COMPANY, INC.,)

Defendant.)

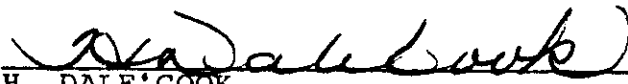
No. 83-C-823-C ✓

J U D G M E N T

This action came on for determination by the Court upon agreed submissions and stipulations of the parties and the issues have been duly tried and a decision having been duly rendered in accordance with the Findings of Fact and Conclusions of Law filed simultaneously herein,

IT IS SO ORDERED AND ADJUDGED that the Court finds in favor of the defendant, Tom Hoyer & Company, and against the plaintiffs, Able Rental Company, Darlene Roach, and Mid-Continental Casualty Company, denying plaintiffs' request for indemnification over and against the defendant.

IT IS SO ORDERED this 20 day of June, 1985.


H. DALE COOK
Chief Judge, U. S. District Court

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 20 1985

JACK J. SILVER, CLERK
U.S. DISTRICT COURT

KOLD-DRAFT OF OKLAHOMA, INC.,
an Oklahoma Corporation,

Plaintiff,

vs.

GULF INSURANCE COMPANY, a
Missouri Corporation,

Defendant.

Case No.: 85-C-511-C

ORDER OF DISMISSAL

ON This 20 day of June, 1985, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

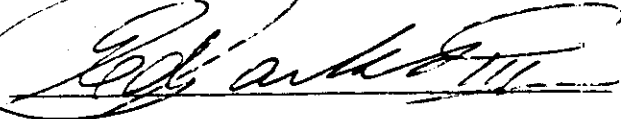
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

(Signed) H. Dale Cook

JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

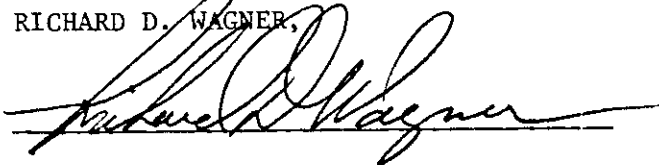
Approvals:

ED PARKS, III

A handwritten signature in cursive script, appearing to read "Ed Parks, III", written over a horizontal line.

Attorney for the Plaintiff,

RICHARD D. WAGNER,

A handwritten signature in cursive script, appearing to read "Richard D. Wagner", written over a horizontal line.

Attorney for the Defendant.

FILED

WERNER C. SILVER, CLERK
U.S. DISTRICT COURT

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IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Rodney E. Drew, for the principal sum of \$196.27, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.68 per month from April 11, 1984, until judgment, plus interest

thereafter at the current legal rate of 7.70 percent from
date of judgment until paid, plus costs of this action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

FILED

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-43-C

The Court being fully advised and having examined the file herein finds that Defendant, Larry Joe Fugate, was served with Summons and Complaint on April 16, 1985; that Defendant, Rebecca Lyn Fugate, was served with Summons and Complaint on April 16, 1985; that Defendant, Board of County Commissioners, Washington County, Oklahoma, was served with Summons and Complaint on May 13, 1985; and that Defendant, County Treasurer, Washington County, Oklahoma, was served with Summons and Complaint on May 13, 1985.

It appears that the Defendants, Larry Joe Fugate, Rebecca Lyn Fugate, Board of County Commissioners, Washington County, Oklahoma, and County Treasurer, Washington County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain Mortgage Note and for foreclosure of a Mortgage securing said Mortgage Note upon the following described real property located in Washington County, Oklahoma, within the Northern Judicial District of Oklahoma:

The West One Hundred Sixty-Five Feet (165') of Lot Three (3), Block Nine (9), Less the West Thirty Feet (30') thereof, of Highland Park Addition to the City of Bartlesville, Washington County, Oklahoma.

THAT on March 5, 1984, Larry Joe Fugate and Rebecca Lyn Fugate executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their Mortgage Note in the amount of \$35,500.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half (12½) percent per annum.

That as security for the payment of the above-described note, Larry Joe Fugate and Rebecca Lyn Fugate executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a Mortgage dated March 5, 1984, covering the above-described property. Said mortgage was recorded on March 8, 1984, in Book 813, Page 706, in the records of Washington County, Oklahoma.

The Court further finds that Defendants, Larry Joe Fugate, and Rebecca Lyn Fugate made default under the terms of the aforesaid Mortgage Note and Mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Larry Joe Fugate, and Rebecca Lyn Fugate, are indebted to the Plaintiff in the sum of \$35,491.75 as of July 1, 1984, plus interest thereafter at the rate of twelve and one-half (12½) percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Larry Joe Fugate, and Rebecca Lyn Fugate, in the amount of \$35,491.75 as of July 1, 1984, plus interest thereafter at the rate of twelve and one-half (12½) percent per annum until judgment, plus interest thereafter at the current legal rate of 7.70 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Larry Joe Fugate, and Rebecca Lyn Fugate, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action
accrued and accruing incurred by the
Plaintiff, including the costs of the sale of
said real property;

Second:

In payment of the judgment rendered herein in
favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited
with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, the Defendants and all
persons claiming under them since the filing of the Complaint, be
and they are forever barred and foreclosed of any right, title,
interest or claim in or to the subject real property or any part
thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 20 1985

JACK C. SUMNER, CLERK
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELIJAH C. HALEY and
BELINDA A. HALEY, now known
as BELINDA ELLIS,

Defendants.

CIVIL ACTION NO. 85-C-89-C

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 20 day
of June, 1985. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; and the Defendants, Elijah C. Haley, and Belinda A.
Haley, now known as Belinda Ellis, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that Defendant, Elijah C. Haley was served with
Summons and Complaint on May 13, 1985; and that Defendant,
Belinda A. Haley, now known as Belinda Ellis, was served with
Summons and Complaint on May 13, 1985.

It appears that the Defendants, Elijah C. Haley, and
Belinda A. Haley, now known as Belinda Ellis, have failed to
answer and their default has therefore been entered by the Clerk
of this Court.

The Court further finds that this is a suit based upon
a certain Mortgage Note and for foreclosure of a Mortgage
securing said Mortgage Note upon the following described real

property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-One (21), Block Four (4), VALLEY VIEW ACRES ADDITION, to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

THAT on November 5, 1982, Elijah C. Haley, and Belinda A. Haley executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their Mortgage Note in the amount of \$27,500.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half (12½) percent per annum.

That as security for the payment of the above-described note, Elijah C. Haley and Belinda A. Haley executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a Mortgage dated November 5, 1982, covering the above-described property. Said mortgage was recorded on November 8, 1982, in Book 4648, Page 2311, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendants, Elijah C. Haley, and Belinda A. Haley, now known as Belinda Ellis, made default under the terms of the aforesaid Mortgage Note and Mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Elijah C. Haley and Belinda A. Haley, now known as Belinda Ellis, are indebted to the Plaintiff in the sum of \$27,457.01 as of July 1, 1984, plus interest thereafter at the rate of twelve and one-half (12½) percent per

annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Elijah C. Haley, and Belinda A. Haley, now known as Belinda Ellis, in the sum of \$27,457.01 as of July 1, 1984, plus interest thereafter at the rate of twelve and one-half (12½) percent per annum until judgment, plus interest thereafter at the current legal rate of 7.70 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Elijah C. Haley, and Belinda A. Haley, now known as Belinda Ellis, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of the sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney

FILED

IN THE UNITED STATES DISTRICT COURT JUN 20 1985
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

DAVID KNIGHT and KATHY KNIGHT,)

Plaintiffs,)

vs.)

No. (C-83)-1002-C.

SEARS, ROEBUCK AND COMPANY,)

Defendant and)

Third Party)

Plaintiff,)

vs.)

DISSTON, INC.)

Third Party)

Defendant.)

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 20th day of June, 1985 the above cause comes on for hearing upon the Joint Application For Dismissal With Prejudice of Plaintiffs' claims. The Court finds that said Application should be granted because the claims of Plaintiffs have been settled and compromised.

It is therefore ordered by the Court that Plaintiffs' claims against the Defendant Sears, Roebuck and Company, and the Third-Party Defendant, Disston, Inc., are hereby dismissed with prejudice.

(Signed) H. Dale Cook

The Honorable H. Dale Cook
United States District Judge

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TINA LAJUAN LATIMER LEWIS,

Defendant.

JUN 20 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 85-C-210-B

DEFAULT JUDGMENT

This matter comes on for consideration this 20th day of June, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Tina Lajuan Latimer Lewis, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Tina Lajuan Latimer Lewis, was served with Summons and Complaint on April 24, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Tina Lajuan Latimer Lewis, for the principal sum of \$1,400.00, plus accrued interest of \$138.25 as of January 27, 1985, plus interest at 3 percent per annum from January 27, 1985, until judgment,

plus interest thereafter at the current legal rate of 7.70
percent until paid, plus costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LITTLE CAESAR ENTERPRISES, INC.

Plaintiff,

FILED

JUN 20 1985

-vs-

Civil Action No. 85-C-434-C
JACK C. SILVER, CLERK
DISTRICT COURT

EDWARD BOLING, d/b/a CAESAR'S
PIZZA,

Defendant.

CONSENT JUDGMENT

Upon consent of the parties and with the Court being
advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Little Caesar Enterprises, Inc. (hereinafter called
"LCE") is a Michigan corporation, having its principal offices
and place of business at 24120 Haggerty Road, Farmington Hills,
Michigan 48024.

2. Edward Boling is a resident of the state of Oklaho-
ma doing business as "Caesar's Pizza" and having a place of
business at 9 West 6th Street, Tulsa, Oklahoma.

3. This Court has subject matter jurisdiction under 15
U.S.C. § 1121 and 28 U.S.C. § 1338.

4. This Court has jurisdiction over the parties to
this Action.

5. The term "LITTLE CAESARS" is a mark owned by LCE and used in connection with LCE's sale of Italian food products and provision of restaurant services to the public.

6. LCE is the owner of United States Service Mark Reg. No. 842,596 (hereinafter called the "'596 Mark"), registered on January 16, 1968, on the "LITTLE CAESARS" term.

7. Defendant operates or did operate a restaurant offering pizza and other Italian food products and restaurant services to the general public.

8. Defendant has used a mark confusingly similar to the '596 Mark in connection with the sale of its pizza and provision of restaurant services the general public.

9. Defendant's use of "Caesar's Pizza" in connection with the sale of such food products and provision of restaurant services is likely to cause confusion, deception and mistake.

10. Defendant, its successors, assigns, affiliates, agents, servants, employees, officers, attorneys, and representatives, and all persons, firms and corporations in active concert or participation with them, are hereby permanently enjoined from using the '596 Mark or any mark including the '596 Mark or any colorable imitation of the '596 Mark or any mark confusingly similar to in connection with the sale of food products or provision of restaurant services.

11. Defendant will file with the Court and serve on LCE within thirty days from the date hereof, pursuant to 15 U.S.C. § 1116, a report, in writing, under oath, setting forth in

detail the manner and form in which Defendant has complied with the injunction.

12. This Court shall retain jurisdiction of this matter to ensure compliance with the terms of this Consent Judgment.

13. Each party shall pay its own costs and attorneys' fees in this Action.

Date: June 20, 1985

LITTLE CAESAR ENTERPRISES, INC.

By: R. David Whitaker
R. DAVID WHITAKER
Attorney for Plaintiff
BOESCHE, McDERMOTT & ESKRIDGE
320 South Boston Building
Suite 1300
Tulsa, Oklahoma 74103
(918) 583-1777

Date: June 17, 1985

OF COUNSEL:

ROBERT C. J. TUTTLE
ELIZABETH F. JANDA
BROOKS & KUSHMAN
3000 Town Center, Suite 2121
Southfield, Michigan 48075
(313) 358-4400

(Signed) H. Dale Cook

UNITED STATES DISTRICT COURT JUDGE

Edward K. Boling
EDWARD BOLING d/b/a
CAESAR'S PIZZA

By: Ronald E. Hignight
RONALD E. HIGNIGHT
Attorney for Defendant
324 S. Main, Suite 611
Tulsa, OK 74103
(918) 584-2667

Date: 5/31/85

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 20 1985

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD L. VAUGHN,

Defendant.

JACK G. SILVER, CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-421-C

ORDER OF DISMISSAL

Now on this 20 day of June, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Richard L. Vaughn, be and is dismissed without prejudice.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 20 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALVIN R. McDONALD,

Defendant.

CIVIL ACTION NO. 85-C-369-C

AGREED JUDGMENT

This matter comes on for consideration this 20 day
of June, 1985, the Plaintiff appearing by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney, and the Defendant, Alvin R. McDonald, appearing pro se.

The Court, being fully advised and having examined the
file herein, finds that the Defendant, Alvin R. McDonald,
acknowledged receipt of Summons and Complaint. The Defendant has
not filed his Answer but in lieu thereof has agreed that he is
indebted to the Plaintiff in the amount alleged in the Complaint
and that judgment may accordingly be entered against him in the
amount of \$831.65, plus interest at the rate of 15.05 percent per
annum and administrative costs of \$.61 per month from August 18,
1983, and \$.68 per month from January 1, 1984, until judgment,
plus interest thereafter at the legal rate from the date of
judgment until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Alvin R. McDonald, in the amount of \$831.65, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from August 18, 1983, and \$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the current legal rate of 7.70 percent from the date of judgment until paid, plus the costs of this action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney



PETER BERNHARDT
Assistant U.S. Attorney



ALVIN R. McDONALD

Entered

FILED
JUN 19 1985

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack L. Silver, Clerk
U.S. DISTRICT COURT

GENE KENDEL BRISTOL and
FERN BRISTOL,

Plaintiffs,

v.

FIBREBOARD CORPORATION,
et al.,

Defendants.

No. 84-C-714-B.

J U D G M E N T

In keeping with the Court's Order entered this date, judgment is hereby entered in favor of defendants, National Gypsum Company, Celotex Corporation, Combustion Engineering, Inc., Eagle-Picher Industries, Inc., Fibreboard Corporation, Flintkote Company, Forty-Eight Insulation, Inc., GAF Corporation, H. B. Fuller Company, Keene Corporation, Nicolet Industries, Inc., Owens-Corning Fiberglas Corp., Owens-Illinois, Inc., Pittsburgh-Corning Corporation, Rock Wool Manufacturing Co., H.K. Porter Company, Standard Asbestos Manufacturing and Insulating Company and Raymark Industries, Inc., and against plaintiffs, Gene Kendel Bristol and Fern Bristol, with costs awarded in favor of defendants.

ENTERED this 19th day of June, 1985.

Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID A. HUMPHREY.

Defendant.

CIVIL ACTION NO. 85-C-418-E

DEFAULT JUDGMENT

This matter comes on for consideration this 19th day of June, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, David A. Humphrey, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, David A. Humphrey, acknowledged receipt of Summons and Complaint on or about May 7, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, David A. Humphrey, for the principal sum of \$246.07, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from August 10, 1983, and \$.68 per month from

January 1, 1984, until judgment, plus interest thereafter at the current legal rate of 7.7⁰% percent from date of judgment until paid, plus costs of this action.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 19 1985

BOISE CASCADE CORPORATION,

Plaintiff,

vs.

THE BURNING HILLS GROUP OF
COMPANIES, INC., a/k/a
BURNING HILLS GROUP OF
COMPANIES, LIMITED, an
Oklahoma corporation, and
COMMUNICATION ASSOCIATES,
INC., an Oklahoma corporation,

Defendants.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 81-C-441-B

A M E N D E D J U D G M E N T

This action came on before the Court on plaintiff Boise Cascade Corporation's motion to enforce settlement agreement, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the plaintiff Boise Cascade Corporation recover of the garnishee Jack Sidney James the sum of \$50,000, with interest thereon at the rate of thirteen percent (13%) per annum from July 1, 1984.

IT IS FURTHER ORDERED AND ADJUDGED that, upon payment by garnishee as set forth above, the plaintiff deliver to the garnishee the plaintiff's judgment against the defendants in the above-entitled cause and an assignment thereof.

Dated at Tulsa, Oklahoma this 19th day of June, 1985.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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JUN 19 1985

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CIVIL ACTION NO. 85-C-455-B

CIVIL ACTION NO. 85-C-455-B

AGREED JUDGMENT

This matter comes on for consideration this 7th day of June, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Cornell K. Nicholson, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Cornell K. Nicholson, was served with Summons and Complaint. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against him in the amount of \$618.20, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from March 16, 1984, until judgment, plus interest thereafter at the legal rate from the date of judgment until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Cornell K. Nicholson, in the amount of \$618.20, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from March 16, 1984, until judgment, plus interest thereafter at the current legal rate of 7.70 percent from the date of judgment until paid, plus the costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

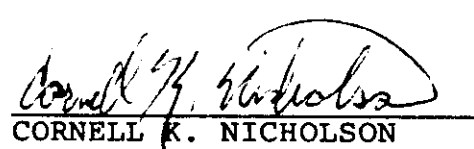
APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney



PETER BERNHARDT
Assistant U.S. Attorney



CORNELL K. NICHOLSON

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF THE STATE OF OKLAHOMA

FRANKIE LOPEZ, a minor under the
age of 18 years, by his next
friend, MARY LOPEZ,

Plaintiff,

VS.

K-MART CORPORATION, a Michigan
corporation,

Defendant.

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85-C-398 E

Entered
FILED

JUN 19 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

ON This 14th day of June, 1985, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

MICHAEL D. CONKLIN,

Michael D. Conklin
Attorney for the Plaintiff,

ALFRED B. KNIGHT,

Attorney for the Defendant.

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

RUNNING C., INC.
Plaintiff

vs.

84-C-666-B

JUN 19 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

BOB BIGPOND and LESTER JACKSON
Defendants,

ADMINISTRATIVE CLOSING ORDER

LESTER JACKSON

The defendant/having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 19th day of June, 1985.

Thomas R. Brett

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUNIOR G. CARTER and MAXINE L.
CARTER,)
)
)
Plaintiffs,)
)
)
v.)
)
)
HARNISCHFEGER CORPORATION, a)
foreign corporation incorporated)
in the State of Oklahoma; and)
REPUBLIC STEEL CORPORATION, a)
foreign corporation incorporated)
in the State of New Jersey,)
)
Defendants.)

NO. 84-C-232-B

O R D E R

Before the Court for consideration is the motion for partial summary judgment of the defendant, Harnischfeger Corporation. Plaintiffs have objected to the motion. For the reasons set forth below, the motion for summary judgment is sustained.

Plaintiff Junior Carter was injured in an industrial accident on March 24, 1982, at Oklahoma Steel Castings Company in Tulsa. Carter, a superintendent for Oklahoma Steel Castings, has alleged a piece of steel fell from an overhead crane manufactured by Harnischfeger, striking him and causing severe injuries. Plaintiff alleges the piece of steel, known as a "trolley stop", had been fastened to the crane by two nuts and bolts, which had sheared. He seeks damages from Harnischfeger and from Republic Steel Corporation, the manufacturer of the nuts and bolts, on theories of manufacturers product liability, breach of express and implied warranty, and negligence.

Harnischfeger has moved for summary judgment on plaintiffs' claim for breach of express and implied warranty, on the grounds that plaintiffs lack standing to sue for breach of warranty and that all warranties had been contractually disclaimed. Defendant also seeks summary judgment that plaintiffs are not entitled to rely on the theory of res ipsa loquitur to establish their claim of negligence against defendant, on the grounds the defendant did not have the requisite "control" of the instrumentality that injured plaintiff.

BREACH OF WARRANTY CLAIM

Plaintiffs have alleged Harnischfeger breached an express warranty that its product would safely and effectively do the job for which it was intended, and breached implied warranties of merchantability and fitness for use.

Harnischfeger contends plaintiffs lack standing to assert breach of warranty claims because they are not in privity of contract with defendant. Defendant further contends it disclaimed both express and implied warranties in the contract for sale of the crane. The Court concludes plaintiffs lack standing to assert the breach of warranty claims; therefore, it will not address the disclaimer issue.

12A Okla.St. Ann. §2-318 provides:

"A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured by breach of the warranty."

The Supreme Court of Oklahoma has expressly refused to extend the coverage of 12A Okl.St. Ann. §2-318 to employees of the buyer. Hardesty v. Andro Corp., 555 P.2d 1030, 1034 (Okla. 1976); Hester v. Purex Corp. Ltd., 534 P.2d 1306 (Okla. 1975). It is undisputed in this case that the plaintiff, Junior G. Carter, was an employee of the buyer of the crane, Oklahoma Steel Castings Company. Therefore, the Court finds plaintiffs lack standing to rely on either express or implied warranty theories of recovery.

RES IPSA LOQUITUR CLAIM

Plaintiffs contend they should be permitted to rely on the doctrine of res ipsa loquitur to establish their claim of negligence against defendant Harnischfeger. That doctrine provides:

"Whenever a thing which produced the injury is shown to have been under the management and control of the defendant, and the occurrence is such as in the ordinary course of events does not happen if due care has been used, the fact of the happening of the accident creates the presumption that the accident and injury resulted from the negligence of the defendant."

Seay v. General Elevator Company, 522 P.2d 1022, 1027 (Okla. 1974).

However, before the plaintiffs may invoke the doctrine of res ipsa loquitur:

"[T]he plaintiff must prove what caused the damage, and that the 'thing' causing said damage was under the control and management of the defendant or his servants, since the doctrine does not go to the extent of implying that one may, from the mere fact of the injury, infer what physical acts produced the injury."

Id. (Emphasis in original).

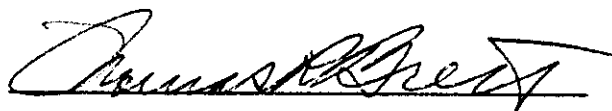
Plaintiffs argue the defendant had "control" over the manufacture and design of the allegedly defective crane; therefore, the doctrine of res ipsa loquitur is applicable. The Court disagrees. As the Oklahoma Supreme Court has stated: "One of the essential factors in the application of that rule is that all of the instrumentalities must have been under the control of the person against whom the rule is asserted." Laffoon Oil Company v. Flanagan, 330 P.2d 194, 197 (Okla. 1958). In this case, the crane was owned and operated by plaintiff's employer for a period in excess of ten years after defendant manufactured and sold it. Therefore, defendant could not have controlled all of the instrumentalities involved in the accident which injured plaintiff. The Court concludes that because plaintiff cannot establish exclusive control by defendant, the doctrine of res ipsa loquitur is inapplicable.

CONCLUSION

Rule 56 of the Federal Rules of Civil Procedure provides summary judgment is proper where no issue of genuine fact remains and the moving party is entitled to judgment as a matter of law. Bruce v. Martin-Marietta, 544 F.2d 442, 445 (10th Cir. 1976). The Court has concluded that plaintiff, as an employee of the buyer, has no standing to assert claims under breach of warranty--either express or implied. The Court has also concluded plaintiff cannot establish the factors necessary to rely on the doctrine of res ipsa loquitur to prove its negligence claim. Therefore, the Court sustains defendant's motion for partial

summary judgment on plaintiffs' claims of breach of warranty and res ipsa loquitur. Plaintiffs' claims of manufacturers product liability and negligence (excluding the concept of res ipsa loquitur) remain to be tried.

IT IS SO ORDERED this 19th day of June, 1985.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

FRANCIS L. ABAD, JR.,)
JENNIFER LEE FOGLESONG ABAD,)
and MICHAEL H. FREEMAN,)

Defendants.)

CIVIL ACTION NO. 85-C-62-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 19th day
of June, 1985. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendant, Michael H. Freeman, Trustee, appears pro
se; and the Defendants, Francis L. Abad, Jr., and Jennifer Lee
Foglesong Abad, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that Defendant, Francis L. Abad, Jr., was
served with Alias Summons, Complaint, and Amendment to Complaint
on April 16, 1985; that Defendant, Jennifer Lee Foglesong Abad
was served with Alias Summons, Complaint, and Amendment to
Complaint on April 16, 1985; and that Defendant Michael H.
Freeman, Trustee, was served with Alias Summons, Complaint, and
Amendment to Complaint on April 8, 1985.

It appears that the Defendant, Michael H. Freeman,
Trustee, filed his Disclaimer herein on May 16, 1985; and that

the Defendants, Francis L. Abad, Jr., and Jennifer Lee Foglesong Abad, have failed to answer and their default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain Mortgage Note and for foreclosure of a Mortgage securing said Mortgage Note upon the following described real property located in Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-One (21) of SKULL HOLLOW COVE, a Subdivision of a part of the East Half (E/2) of Section Twenty-Six (26), Township Twenty-Three (23) North, Range Fifteen (15) East of the Indian Base and Meridian, Rogers County, State of Oklahoma, according to the Recorded Plat thereof.

THAT on August 16, 1982, Francis L. Abad, Jr., and Jennifer Lee Foglesong Abad, executed and delivered to Foster Mortgage Corporation, a Mortgage Note in the amount of \$69,750.00, payable in monthly installments, with interest thereon at the rate of 15.5 percent per annum.

That as security for the payment of the above-described note, Francis L. Abad, Jr., and Jennifer Lee Foglesong Abad, executed and delivered to Foster Mortgage Corporation, a mortgage dated August 16, 1982, covering the above-described property. Said mortgage was recorded on August 18, 1982, in Book 629, Page 62, in the records of Rogers County, Oklahoma.

The Court further finds that on August 16, 1982, the mortgage referred to above was transferred to Wachovia Mortgage Company. This transfer of lien was recorded on February 7, 1983, in Book 640, Page 77, in the records of Rogers County, Oklahoma.

The Court further finds that on February 29, 1984, Wachovia Mortgage Company assigned the mortgage referred to above to the Administrator of Veterans Affairs. This assignment of mortgage was recorded on April 27, 1984, in Book 675, Page 17, in the records of Rogers County, Oklahoma.

The Court further finds that Defendants Francis L. Abad, Jr., and Jennifer Lee Foglesong Abad made default under the terms of the aforesaid mortgage note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued and that by reason thereof the Defendants, Francis L. Abad, Jr., and Jennifer Lee Foglesong Abad, are indebted to the Plaintiff in the sum of \$77,067.36 as of May 1, 1984, plus interest thereafter at the rate of 15.5 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Francis L. Abad, Jr., and Jennifer Lee Foglesong Abad, in the principal amount of \$77,067.36 as of May 1, 1984, plus interest thereafter at the rate of 15.5 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.70% percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Francis L. Abad, Jr., and Jennifer Lee Foglesong Abad, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United

States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of the sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney

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DEFAULT JUDGMENT

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The Court being fully advised and having examined the file herein finds that Defendant, Wanda Lue Goudeau, acknowledged receipt of Summons and Complaint on January 30, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Wanda Lue Goudeau, for the principal sum of \$2,163.87, plus accrued interest of \$1,044.48 as of August 31, 1983, plus interest on the principal sum of \$2,163.87 at 4 percent from August 31, 1983.

until judgment, plus interest thereafter at the current legal rate of 7.70 percent from date of judgment until paid, plus costs of this action.

S/ JAMES O. ELISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Entered
FILED

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLARENCE E. PATRICK;
SARAH C. PATRICK,

Defendants.

JUN 19 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 84-C-552-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 19th day
of June, 1985. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; and the Defendants, Clarence E. Patrick, and Sarah C.
Patrick, appear by their attorney, Marshall Dale Evans.

The Court being fully advised and having examined the
file herein finds that the Defendants, Clarence E. Patrick and
Sarah C. Patrick were duly served with Summons and Complaint
herein, and that Defendants filed their Answer to the Complaint
on July 2, 1984. However, Defendants do not contest the
allegations of the Complaint, and have consented to entry of
judgment as follows.

The Court further finds that this is a suit based upon
a certain Mortgage Note and for foreclosure of a Mortgage
securing said Mortgage Note upon the following described real
property located in Tulsa County, Oklahoma, within the Northern
Judicial District of Oklahoma:

Lot Seven (7), Block Six (6), SMITHDALE, an Addition in Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

That on April 29, 1983, Clarence E. Patrick, and Sarah C. Patrick, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their Mortgage Note in the amount of \$37,500.00, payable in monthly installments with interest thereon at the rate of 12 percent per annum.

That as security for the payment of the above-described note, Clarence E. Patrick, and Sarah C. Patrick, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a Mortgage dated April 29, 1983, covering the above-described property. Said mortgage was recorded on May 27, 1983, in Book 4694, Page 1269, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendants, Clarence E. Patrick and Sarah C. Patrick, filed a Chapter 13 Petition on November 16, 1984, in the United States Bankruptcy Court for the Western District of Arkansas, Fort Smith Division. On March 11, 1985, the United States Bankruptcy Court for the Western District of Arkansas, Fayetteville Division, entered an order granting the motion of the United States of America for abandonment of the real property which is the subject of this action, and further granting to the United States relief from the automatic stay.

The Court further finds that Defendants, Clarence E. Patrick, and Sarah C. Patrick, made default under the terms of the aforesaid Mortgage Note and Mortgage by reason of their

failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Clarence E. Patrick, and Sarah C. Patrick, are indebted to the Plaintiff in the sum of \$37,540.32 as of October 1, 1983, plus interest thereafter at the rate of 12 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Clarence E. Patrick, and Sarah C. Patrick, in the principal amount of \$37,540.32 as of October 1, 1983, plus interest thereafter at the rate of 12 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.70% percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Clarence E. Patrick, and Sarah C. Patrick, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of the sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.


The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

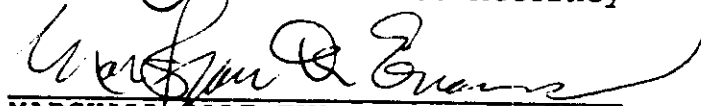
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, the Defendants, and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney


MARSHALL DALE EVANS
Attorney for Defendants
Clarence E. Patrick and
Sarah C. Patrick

- Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TOMMY E. HENSHAW, JR., et al,)
)
Plaintiff,)
)
vs.)
)
ECHO PRODUCTION, et al,)
)
Defendants and)
Third-Party)
Plaintiffs,)
)
vs.)
)
W & D DRILLING COMPANY, INC., et al,)
)
Third-Party)
Defendants.)

FILED

JUN 19 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT
Case No.: 84-C-425-E

ORDER OF DISMISSAL

ON This 19th day of June, 1985, upon the written application of the parties for a Dismissal with prejudice of the Complaint, Cross Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint, Cross Complaint and all causes of action, and have requested the Court to dismiss said Complaint, Cross Complaint and all causes of action, with prejudice to any future action, and the Court being fully advised in the premises finds that said Complaint, Cross Complaint and all causes of action should be dismissed pursuant to said application.

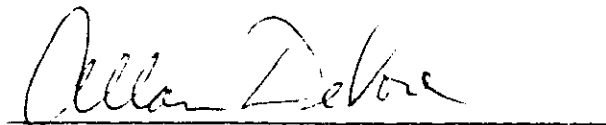
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint, Cross Complaint and all causes of action of all parties filed herein, be and the same hereby are dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

APPROVALS:

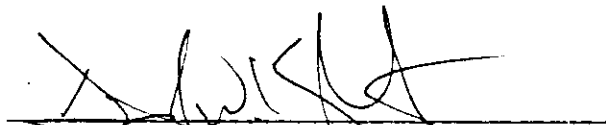
JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

ALLAN DEVORE,



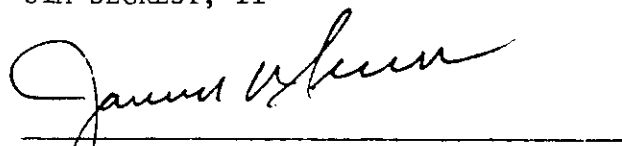
Attorney for Tommy E. Henshaw, ET AL

DAVID W. KNIGHT,



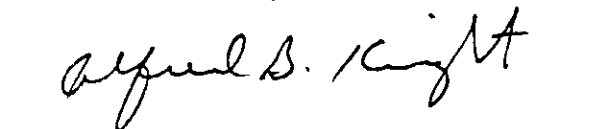
Attorney for Echo Productions, Inc. and
Suerte Petroleum Company

JIM SECREST, II



Attorney for W & D Drilling Company, Inc.,

ALFRED B. KNIGHT,



Attorney for Randy Cornelius & Joel
Thurmond d/b/a Oklahoma Dozer Services.

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

KAISER-FRANCIS OIL COMPANY,)
a Delaware corporation,)
)
Plaintiff,)
)
v.)
)
PRODUCER'S GAS COMPANY,)
a Texas corporation,)
)
Defendant.)

No. 83-C-400-B ✓

O R D E R

This matter comes before the Court on plaintiff Kaiser-Francis Oil Company's motion for partial summary judgment against defendant Producer's Gas Company pursuant to Rule 56(c) F.R.Civ.P. on the issue of defendant's liability under two natural gas purchase contracts. Both parties have filed briefs on the subject. For the reasons below, the motion for partial summary judgment is granted.

STATEMENT OF FACTS

Plaintiff-seller, Kaiser-Francis Oil Company ("Kaiser-Francis"), and defendant-buyer, Producer's Gas Company ("PGC") entered into two separate natural gas purchase contracts. The first contract, entered into on December 10, 1980, covered various wells in Ellis County, Oklahoma (the "Ellis contract"). The second contract, entered into on April 6, 1982, covered one well in Roger Mills County, Oklahoma (the "Cronin contract").

Both the Ellis and Cronin contracts contain an Article 4.1 which provides in part "...Buyer shall purchase and receive from

Seller or pay for if available but not taken, a quantity of gas equal to the Daily Contract Quantities herein specified."¹ This provision, known in the industry as a "take or pay" clause, acts in connection with Article 4.7 which provides for the payment of any deficiency it takes found to exist at the end of an accounting year:

"If at the end of any Accounting Year, Buyer shall have failed to purchase during such Year the sum of the applicable Daily Contract Quantities, after credit is allowed Buyer for (i) deficiency existing by force majeure . . . Buyer shall pay for the remaining deficiency as if taken."

On February 3, 1983 Kaiser-Francis informed PGC of deficiencies under the Ellis contract for the accounting period February 1982 through December 1982.

PGC responded on February 14, 1983, informing Kaiser-Francis that no deficiency payments were due because (1) these wells had a large volume of water thus failing to meet the gas quality specifications under Article 9.1, and (2) that a force majeure situation existed because of a partial or entire failure of market conditions.

By letter dated March 30, 1983, PGC proposed a contract amendment to each of its gas producers, including Kaiser-Francis. This amendment, directed to the Ellis contract, provided in part that "Buyer shall pay Seller, as total compensation for all gas purchased and taken under the terms of the Agreement, in each

¹ Such contract provisions were not uncommon in the early eighties during the energy boom when the demand for natural gas exceeded the supply, thus assuring the purchaser of a natural gas continuing supply at an agreed upon price.

month, a price per MMBtu equal to that price at which Buyer, in Buyer's sole judgment, can effectively market gas..." Letter of March 30, 1983, p.2. PGC's stated intention was "to take ratably ... from all producers agreeing to this amendment." Id.

On June 8 the parties met to discuss the situation. The contents of this meeting are disputed.

By letter dated June 15, 1983, Kaiser-Francis demanded that PGC comply with the "take or pay" provisions of the contract and pay Kaiser-Francis at the contract rate for its proportionate share of gas currently being produced from the well.

By letter dated June 27, 1983, PGC responded to Kaiser-Francis stating that "the June 8, 1983 meeting ... did not result in PGC advising that PGC would not make payment under the take or pay provisions of the contract, but rather established that PGC, in absence of an affirmative response by Kaiser-Francis to PGC's letter of March 30, 1983, giving recognition to the force majeure situation on PGC's system, is unable, contractually or otherwise to market the gas of Kaiser-Francis." PGC declined to take any gas "that does not comport to those certain conditions necessary to create and/or meet market demands."

THEORIES OF LIABILITY

Kaiser-Francis contends PGC is liable under three theories: (1) failure to make required deficiency payments under the "take or pay" provisions (Supplemental Complaint, 1st and 6th claims for relief), (2) repudiation of the Ellis and Cronin contracts (Supplemental Complaint, 2nd, 3rd, 7th and 8th claims for

relief), and (3) underpayment for gas owned by Kaiser-Francis and taken by PGC from the wells subject to the Ellis and Cronin contracts but paid to other working interest owners (Supplemental Complaint, 4th, 5th, 9th and 10th claims for relief).

PGC's failure to take or pay for natural gas pursuant to Article 4.7 of the Ellis and Cronin contracts constitutes a breach of those contracts. Since the Court finds PGC liable to Kaiser-Francis for failing to make the required deficiency payments, it is not necessary to decide if PGC is liable under Kaiser-Francis' third theory, under payment of gas owned by Kaiser-Francis and taken by PGC but paid to other working interest owners. The questions remaining are (1) whether the actions of the defendant constituted an anticipatory repudiation, and (2) whether any of the affirmative defenses asserted excuse performance of the contracts.

PGC asserts it has not repudiated the contracts but stands ready and willing to perform once the force majeure situation has passed or if Kaiser-Francis will renegotiate the selling price. PGC submits that the urging of a particular interpretation of a termination clause is neither failure to perform contract obligations (breach) nor an indication those obligations will not be performed in the future (repudiation). Bill's Coal Co. v. Board of Public Utilities, Etc., 682 F.2d 883, 886 (10th Cir. 1982). In Bill's Coal, however, the court found that neither party's performance under the contract had been affected. In the present case, Kaiser-Francis' rights under the contracts,

specifically - the right to receive "take or pay" payments under Article 4.7 of the Ellis and Cronin contracts, have been adversely affected.

Kaiser-Francis contends that by its letter of March 30, 1983, it requested adequate assurance under 12A O.S. §2-609 with respect to the Ellis contract. Kaiser-Francis alleges PGC refused to give such assurances, making PGC liable for repudiation of the contract under 12A O.S. 1981 §2-610(b). PGC, however, did respond to Kaiser-Francis' request by asserting that take or pay payments were not due because (1) the gas failed to meet Article 9.1 quality specifications, and (2) a force majeure situation existed. PGC has not repudiated the contracts by urging its own interpretation of contractual provisions which would excuse performance. The Court concludes PGC's acts, given the alleged failure to meet gas quality specifications and its interpretation of this particular force majeure clause, did not constitute a repudiation avoiding the contract as a whole. See generally, N.Y. Life Insurance Co. v. Viglas, 297 U.S. 672, 681 (1936).

AFFIRMATIVE DEFENSES

PGC argues that its performance should be excused under the contracts by five affirmative defenses. Each defense will be treated separately below.

(1) PGC has no obligation to take or pay for gas from Kaiser-Francis during the existence of force majeure.

Article 4.7 of both contracts provides that PGC is allowed credit for "(i) deficiency existing by force majeure." Force majeure is defined in Article 14.1, in part as "...partial or entire failure of gas supply or demand over which neither seller nor buyer have control." PGC argues that this language gives special meaning to the term force majeure not traditionally found in such clauses. The thrust of PGC's argument is that this language shifts the risk of a fall in gas prices from the buyer to the seller.

Kaiser-Francis, however, contends that the purported failure of market demand is solely a product of PGC's unwillingness to sell the gas at the current market price. In other words, there is a market, though not at a price profitable to PGC.

The key question is whether the parties intended a drop in the price of natural gas to constitute a "partial failure of gas demand", thus bringing the force majeure clause into play.

The Oklahoma rule is that the intention of the parties must be deduced from the entire agreement, and every provision must be construed so as to be consistent with every other provision, if possible, and that construction is adopted which gives effect to the entire contract. Frankfurt Oil Company v. Snakard, 279 F.2d 436, 441 (10th Cir. 1960). The whole of a contract is to be taken together, so as to give effect to every other part, if reasonably practical, each clause helping to interpret the others. 15 Okl.St. Ann. §157.

PGC's interpretation would render the take or pay provisions of the contracts virtually useless, allowing PGC to claim a force majeure situation at any time it is faced with an over supply or a drop in the price of natural gas. If this had been the intent of the parties, a market out or price redetermination clause should have been included in the contracts. A force majeure clause is not a substitute for those types of clauses and thus provides no defense for PGC.

(2) PGC has no obligation to take or pay for gas produced pursuant to the contracts because it failed to meet the quality specifications set forth therein.

Both the Ellis and Cronin contracts provide that the natural gas delivered thereunder shall contain no more than seven (7) pounds of water per million cubic feet (MMcf) of gas. Article 9.1(i).

Article 9.4 provides the following procedure in the event the gas does not conform to the agreed upon specifications:

"If neither Buyer nor Seller elects to treat the gas to conform to the above specifications, then buyer shall upon ninety (90) days prior written notice from seller [emphasis added] release from the provisions of this agreement the well (as to the producing formation only) from which such gas is produced and the acreage attributable thereunder, so long as failure of such gas to meet the above specifications is not caused by seller's nonperformance or malperformance under this agreement."

PGC points out that Article 9.4 requires written notice from the seller, i.e., Kaiser-Francis, but makes no provision for notice from the buyer. However, Article 9.2 provides in part: "Buyer

at its option may refuse to accept delivery of any gas not meeting the quality specifications set out in this Article IX; thereafter seller shall have the right to conform the gas to the above specifications."

Implicit within Article 9.2 is the requirement of a refusal to accept nonconforming gas. PGC did not refuse to accept delivery until February 14, 1983, after the close of the 1982-83 contract period. Therefore, with respect to that particular accounting period, PGC denied Kaiser-Francis its right to conform the gas to meet the Article 9.1 specifications. As Kaiser-Francis points out, it is only after "neither Buyer nor Seller elects to treat the gas to conform" that Article 9.4 comes into play. Article 9 therefore provides no defense for PGC prior to February 14, 1983.

Kaiser-Francis argues PGC should be estopped from asserting the "failure of gas quality" defense for the accounting period 1983 until the present for two reasons: (1) PGC continues to take gas from other working interest owners in the well who modified their contracts according to PGC's demands--without regard to the water content of the gas, and (2) Kaiser-Francis was willing to install the equipment necessary to solve the quality problems if PGC had agreed to perform its obligations under the contract.

Although PGC has the right under Article 9.5 to refuse future deliveries of any nonconforming gas even though it has accepted such gas in the past, Kaiser-Francis must be given the

chance to conform the gas to Article 9 specifications. Kaiser-Francis' right to conform the gas was impaired because it had no adequate assurance that if it expended the money to conform the gas PGC would then honor the contracts. On the contrary, Kaiser-Francis was informed it could get no such assurance from PGC until it modified the contracts, at which point gas quality would apparently no longer be a problem for PGC. Thus, Article 9 does not provide a defense for PGC for the accounting period from 1983 until present. Nothing, however, prevents PGC from requiring Kaiser-Francis to conform the gas to Article 9 specifications in the future as long as Kaiser-Francis can expect PGC to fulfill its part of the contract.

(3) PGC is not taking any gas from Kaiser-Francis pursuant to the contract at this time. Kaiser-Francis may therefore look only to its co-working owners pursuant to 52 Okl.St. Ann. 1983 §544 for any gas taken by PGC.

Section 544 is part of a statutory scheme to protect the correlative rights of all the interest owners in a well. Nothing in 52 Okl.St. Ann. 1983 §544 purports to address the situation in this case. Section 544 provides in full:

"On and after the effective date of this act, an owner of a well producing natural gas or casinghead gas may produce daily from the well that amount of gas which may be lawfully produced therefrom. The amount of gas produced daily, irrespective of the owner producing, belongs to, is owned by, and shall inure to the benefit of each owner in the well in proportion to each owner's interest in the well. Each owner who produces natural gas or casinghead gas and who separately sells or otherwise disposes of the gas must account to each other owner in the well not selling or otherwise disposing of

gas from the well for that owner's part of the gas so disposed of or sold. In addition, each selling or disposing owner must compensate each owner not selling or disposing of gas from the well for that owner's proportionate part of the gas disposed of or sold."

Though the statute deals with the right of joint interest owners vis-a-vis each other, it does not affect their contractual rights with gas purchasers. Read in connection with 52 Okl.St. Ann. §546, part of the same act, which provides in part "Nothing in this act shall be construed as setting the price, terms or conditions under which a purchaser takes the production of a well...." it is clear that 52 Okl.St. Ann. 1983 §544 provides no defense for PGC under its contract with Kaiser-Francis.

(4) The Natural Gas Policy Act of 1978 prohibits the payments for which Kaiser-Francis seeks recovery.

The take-or-pay provisions are similar to those found in Southport v. PGC, No. 83-550-B (June 3, 1984), where the Court in paragraph 5 of its Conclusions of Law stated, "The take-or-pay provisions of the contract do not violate any provision of the Natural Gas Policy Act of 1978, as amended."

(5) PGC had no obligation to make the payments sought by Kaiser-Francis because production of the gas not taken from Kaiser-Francis would have exceeded the market demand for such gas and would have constituted waste under 52 Okl.St. 1981 §86.3.

This argument was also rejected by this Court in Southport v. PGC, No. 83-550-B (June 3, 1984). The gas made available to PGC pursuant to the Ellis and Cronin contracts but not taken by PGC does not constitute waste within the meaning of 52 Okl.St.

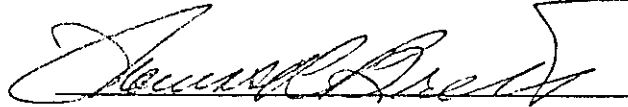
1981 §86.3. That section defines waste by listing examples of waste, all of which require production of natural gas. The take-or-pay provisions of the contracts do not require production, but rather provide for payment in lieu of production.

CONCLUSION

For the reasons heretofore stated, the motion for partial summary judgment of the plaintiff, Kaiser-Francis, against the defendant, Producer's Gas Company, pursuant to Rule 56(c), F.R.Civ.P., on the issue of liability is hereby granted on plaintiff's 1st, 4th, 5th, 6th, 9th and 10th claims for relief.

This matter is hereby set for status conference on the remaining issues on July 1, 1985, at 4:30 P.M.

ENTERED this 17th day of June, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CELTIC LIFE INSURANCE)	
COMPANY,)	
)	
Plaintiff,)	
)	
vs.	)	No. 84-C-880-B
)	
CAROLYN GUEST, individually)	
and ROSE STANTON, individually)	
and as Executrix of the Estate)	
of Doyle R. Waldrop, Sr.,)	
Deceased,)	
)	
Defendants.)	

O R D E R

Upon motion of the Plaintiff, Celtic Life Insurance Company for a default judgment against the Defendant, Carolyn Guest for failure to answer or otherwise defend; it appearing that Summons and Complaint were served on the Defendant, Carolyn Guest, on November 5, 1984, by certified mail, return receipt requested and that Return of Summons was filed in this Court on November 8, 1984 with the certified mail receipt and return receipt attached; good cause having been shown; Plaintiff's motion is hereby granted and it is, THEREFORE, ORDERED, ADJUDGED AND DECREED that default judgment be allowed in favor of the Plaintiff, Celtic Life Insurance Company and against the Defendant, Carolyn Guest.

DATED this 18 day of June, 1985.

THOMAS R. BRETT

THOMAS BRETT, UNITED STATES
DISTRICT JUDGE

**NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.**

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JERRY W. JEFFERSON; JOY A.
JEFFERSON; COUNTY TREASURER,
Nowata County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Nowata County, Oklahoma,

Defendants.

FILED

JUN 18 1985

J. L. Tiller, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-129-B

SECOND AMENDED JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 18th day of June, 1985. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants County Treasurer and Board of County Commissioners, Nowata County, Oklahoma, appear not, having previously disclaimed any interest in the real property involved in this action; and the Defendants, Jerry W. Jefferson and Joy A. Jefferson, appear not, but make default.

The Court being fully advised and having examined the file herein finds that Defendant, Jerry W. Jefferson acknowledged receipt of Summons and Complaint on February 13, 1985; that the Defendant Joy A. Jefferson acknowledged receipt of Summons and Complaint on February 13, 1985; and that the Defendant, County

Treasurer, Nowata County, Oklahoma, acknowledged receipt of Summons and Complaint on February 13, 1985.

It appears that the Defendants, County Treasurer and Board of County Commissioners, Nowata County, Oklahoma, filed their Answer on February 14, 1985; and the County Treasurer, Nowata County, filed her Disclaimer on May 15, 1985, and that the Defendants, Jerry W. Jefferson and Joy A. Jefferson, have failed to answer and their default has been entered by the Clerk of this Court on March 14, 1985.

The Court further finds that this is a suit based upon certain promissory notes and a real estate mortgage securing said promissory notes upon the following described real property located in Nowata County, Oklahoma, within the Northern Judicial District of Oklahoma:

The West half of Lots 7 and 8 in Block 2,
Minnie Riley Addition to the City of Nowata,
Oklahoma.

The Court further finds that on July 1, 1980, Jerry W. Jefferson and Joy A. Jefferson executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$25,000.00, payable in monthly installments with interest thereon at the rate of 9 percent per annum.

The Court further finds that on July 1, 1980, Jerry W. Jefferson and Joy A. Jefferson executed and delivered to the United States of America, acting through the Farmers Home

Administration, their promissory note in the amount of \$7,000.00, payable in monthly installments, with interest thereon at the rate of 9 percent per annum.

The Court further finds that as security for the payment of the above described notes, Jerry W. Jefferson and Joy A. Jefferson executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated July 1, 1980, covering the above described real property. This mortgage was recorded on July 1, 1980, in Book 517, Page 150, in the records of Nowata County, Oklahoma.

The Court further finds that Defendants, Jerry W. Jefferson and Joy A. Jefferson, made default under the terms of the aforesaid promissory notes and mortgage, which default has continued and that by reason thereof the Defendants, Jerry W. Jefferson and Joy A. Jefferson, are indebted to the Plaintiff in the principal sum of \$23,347.16, plus accrued interest of \$1,660.57 as of August 28, 1984, plus interest thereafter at the rate of 9 percent per annum, or \$5.7568 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer and Board of County Commissioners, Nowata County, Oklahoma, claim no right, title, or interest in the property which is the subject of this foreclosure action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Jerry W.

Jefferson and Joy A. Jefferson, in the principal amount of \$23,347.16, plus accrued interest of \$1,660.57 as of August 28, 1984, plus interest thereafter at the rate of 9 percent per annum or \$5.7568 per day until judgment, plus interest thereafter at the rate of 9.15 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Jerry W. Jefferson and Joy A. Jefferson, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any

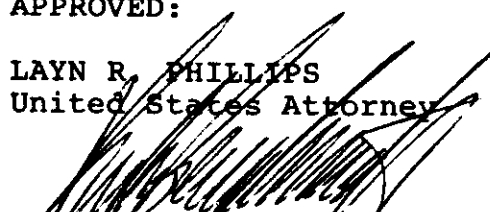
right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney



PETER BERNHARDT
Assistant United States Attorney

FILED

JUN 18 1985

IN THE UNITED STATES DISTRICT COURT JACK C. SILVER, CLERK
FOR THE NORTHERN DISTRICT OF OKLAHOMA U.S. DISTRICT COURT

INTERNATIONAL NAVIGATION,
LTD., a corporation,

Plaintiff,

vs.

TULOMA STEVEDORING, INC.,
a corporation,

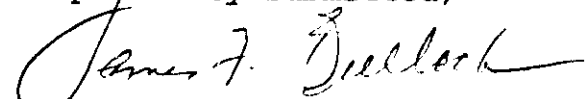
Defendant.

No. 85 C 410 C

NOTICE OF DISMISSAL

Comes now the Plaintiff, International Navigation, Ltd., and hereby dismisses its cause of action against Tuloma Stevedoring, Inc., pursuant to Rule 41(c) of the Federal Rules of Civil Procedure.

Respectfully submitted,

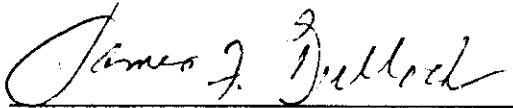


JAMES F. BULLOCK - OBA #1304
PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR
2200 Fourth National Bldg.
Tulsa, OK 74119

Attorneys for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Notice of Dismissal was mailed, postage prepaid, to Mr. James E. Green, Jr., Hall, Estill, 4100 Bank of Oklahoma Tower, Tulsa, Oklahoma 74172, on this 14 day of June, 1985.


James F. Bullock

FILED
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 18 1985

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARY E. SISOVSKY and
FRED C. SISOVSKY,

Defendants.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-128-B

NOTICE OF DISMISSAL

COMES NOW the United States of America by
Layn R. Phillips, United States Attorney for the Northern
District of Oklahoma, Plaintiff herein, through Peter Bernhardt,
Assistant United States Attorney, and hereby gives notice of its
dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure,
of this action without prejudice.

Dated this 18th day of June, 1985.

UNITED STATES OF AMERICA

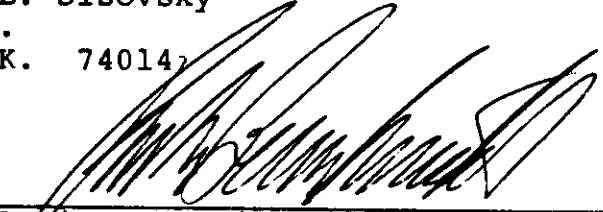
LAYN R. PHILLIPS
United States Attorney

PETER BERNHARDT
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 18th day of June, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Fred C. & Mary E. Sisovsky
1900 N. 24th St.
Broken Arrow, OK. 74014


Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 18 1985

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESSE W. BRIDGES,

Defendant.

JACK G. SILVER, CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-452-E

NOTICE OF DISMISSAL

COMES NOW the United States of America by
Layn R. Phillips, United States Attorney for the Northern
District of Oklahoma, Plaintiff herein, through Peter Bernhardt,
Assistant United States Attorney, and hereby gives notice of its
dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure,
of this action without prejudice.

Dated this 18th day of June, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

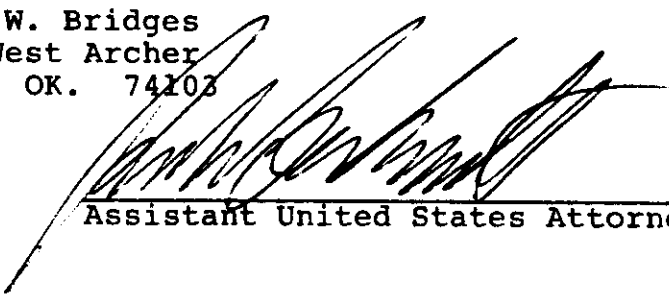
PETER BERNHARDT
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, Oklahoma 74103

(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 18th day of June, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Jesse W. Bridges
1816 West Archer
Tulsa, OK. 74103



Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 17 1985

OPAL PALMER,

Plaintiff,

vs.

PARKER DRILLING COMPANY
OF OKLAHOMA, INC.,
an Oklahoma corporation,

Defendant.

NO. 84-C-680-B

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

J U D G M E N T

This action came on before the Court on defendant Parker Drilling Company's motion for summary judgment, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing and that the action be dismissed on the merits.

DATED at Tulsa, Oklahoma this 17th day of June, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUNIOR G. CARTER and MAXINE L.
CARTER,

Plaintiffs,

v.

HARNISCHFEGGER CORPORATION, a
foreign corporation incorporated
in the State of Delaware; and
REPUBLIC STEEL CORPORATION, a
foreign corporation incorporated
in the State of New Jersey,

Defendants.

Case No. 84-C-232-B

FILED

JUN 17 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

On presentation of a Stipulation for Dismissal filed in
the within proceeding;

IT IS ORDERED, ADJUGDED, AND DECREED THAT:

1. Plaintiffs' Complaint, including all claims therein,
shall be and is hereby dismissed with prejudice as to Republic
Steel Corporation.

2. Each party shall bear their or its own costs in this
matter.


UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 17 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

BANK OF COMMERCE AND TRUST
COMPANY,

Plaintiff,

vs.

No. 84-C-934-C

DELAWARE ENERGY SHARES, INC.;
DUNOCO DEVELOPMENT CORPORATION
and LONNIE M. DUNN, JR.,

Defendants,

and

DALCO PETROLEUM CORPORATION,
a Nevada corporation, PEAT,
MARWICK & MITCHELL, an Oklahoma
corporation; UTICA BANK AND TRUST
COMPANY; JAY THOMAS; KENNETH C.
BOND; C. PAUL EVANS; PAUL H.
MINDEMAN; L. DALE MITCHELL;
WAYNE R. SHARP; VIRGIL S. TILLEY,
JR.; JAMES W. VICKERS; DEREK
WHITTLE; JOHN BREITENSTEIN;
MURRAY L. DEA; ARTHUR R. SMITH;
and GEORGE W. OUGHTRED,

Third-Party
Defendants.

STIPULATION OF DISMISSAL

The Defendants, Delaware Energy Shares, Inc., Dunoco Development Corporation, and Lonnie M. Dunn, Jr., by and through their attorneys of record, Friedemann & Menke, and the Third-Party Defendants, Utica National Bank & Trust Company and Fred Chute Danforth, by and through their attorneys of record, Doerner, Stuart, Saunders, Daniel & Anderson, stipulate pursuant to Rules 41(a) and (c) of the Federal Rules of Civil Procedure that all counterclaims, third-party complaints, and other causes of action

filed by the Defendants, Delaware Energy Shares, Inc., Dunoco Development Corporation and Lonnie M. Dunn, Jr., against the Third-Party Defendants, Utica National Bank & Trust Company and Fred Chute Danforth, shall be and are hereby dismissed with prejudice.

FRIEDEMANN & MENKE

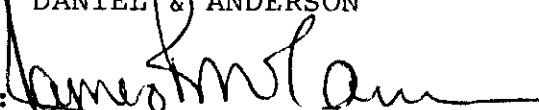
By:



1900 Bank of America Tower
One City Boulevard West
Orange, California 92668

DOERNER, STUART, SAUNDERS
DANIEL & ANDERSON

By:



C. Michael Lewis
James P. McCann
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

FILED

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 17 1985

RUNNING C, INC.,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 84-C-666-B
)	
BOB BIGPOND and LESTER)	
JACKSON,)	
)	
Defendants.)	

Jack C. Silver, Clerk
U.S. DISTRICT COURT

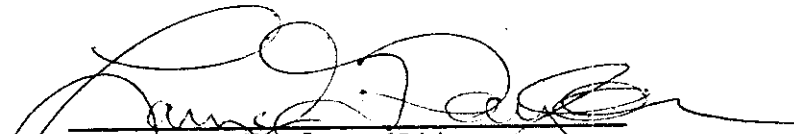
JOURNAL ENTRY OF JUDGMENT

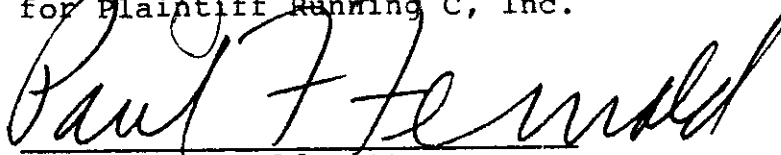
NOW on this 6th day of June, 1985, this matter comes on for hearing before this Court and the Plaintiff, RUNNING C, INC., appears by and through counsel, Feldman, Hall, Franden, Woodard & Farris, by Larry G. Taylor and the Defendant, BOBBY BIGPOND, appears by and through counsel, Paul F. Fernald and Ed Chapman, and the Court is advised by counsel that settlement has been reached in this case and the Defendant, Bobby Bigpond admits liability and will allow judgment to be taken against him in this matter, and the Court therefore finds the Defendant Bobby Bigpond is liable to the Plaintiff Running C, Inc. in the amount of \$208,488.00 for lease payments plus interest through May 1, 1985, for damage to the drilling rig in the amount of \$160,000.00, for interest on the damage to the drilling rig at the statutory rate since February 1, 1983, for costs expended in this action and a reasonable attorney's fee of \$5,000.00.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THIS COURT that the Plaintiff, Running C, Inc., shall be granted judgment against the Defenant, Bobby Bigpond, in the amount of \$208,488.00 in lease payments including interest through May 1, 1985, for

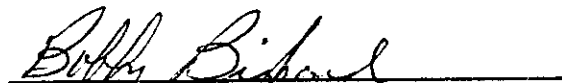
damage to the drilling rig in the amount of \$160,000.00, for interest on the damage to the drilling rig at the statutory rate since February 1, 1983, for costs expended in this action and a reasonable attorney's fee of \$5,000.00.


United States District Judge


Larry G. Taylor, Attorney
for Plaintiff Ranning C, Inc.


Paul F. Fernald, Attorney
for Defendant Bobby Bigpond


Ed Chapman, Attorney for
Defendant Bobby Bigpond


Bobby Bigpond, Defendant

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Case No. 85-C-315-BT ✓

Defendants.

John R. Bynum & Donna S. Bynum

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 14th day of JUNE, 1985.

12

FILED

JUN 14 1986

Jack L. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN STATES INSURANCE COMPANY,))
Plaintiff,))
vs.))
FRANCES HAUS, d/b/a FRANCES BEAUTY))
SHOP; KENNETH SKINNER and SANDRA))
SKINNER, Husband and Wife, Natural))
Parents, Guardians and Next))
Friends of BILLY SKINNER, a Minor;))
and HAROLD J. HAUS,))
Defendants.))

No. 85-C-181-E ✓

CONSENT DECREE


Entered upon stipulation, the plaintiff, American States Insurance Company, having filed its Complaint requesting the United States District Court for the Northern District enter an order and judgment finding that the plaintiff, American States Insurance Company, under policy number 02-BO-033279-2 was under no duty to defend or indemnify Frances Haus, d/b/a Frances Beauty Shop, and Harold J. Haus; and the plaintiff and defendants, Skinner and Haus, having agreed upon a basis for the judgment of the matters alleged in the Complaint and the entry of a judgment in this action, and having entered into a stipulation, the original of which is being filed with the Court, and due deliberation being had thereon, now, on motion of counsel for the plaintiff, IT IS


ORDERED, ADJUDGED AND DECREED that final judgment in favor of the plaintiff and against the defendants is hereby granted and ordered entered as the judgment in this action as follows:


ORDERED, ADJUDGED AND DECREED that the American States Insurance Company, under policy number 02-BO-033279-2 insuring Frances Haus, d/b/a Frances Beauty Shop, and Harold J. Haus was and is under no duty to defend or indemnify Frances Haus, d/b/a Frances Beauty Shop, or Harold J. Haus as a result of an action filed in the District Court in and for Mayes County, State of Oklahoma, in which the defendants, Kenneth Skinner and Sandra Skinner, Husband and Wife, Natural Parents, Guardians and Next Friends of Billy Skinner, a Minor, were plaintiffs, and the defendants, Frances Haus, d/b/a Frances Beauty Shop, and Harold J. Haus, were defendants.

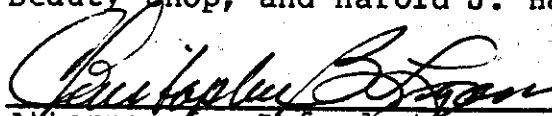
ORDERED, ADJUDGED AND DECREED that the actions complained of in the Petition filed in the District Court in and for Mayes County, State of Oklahoma, were intentional and that a jury in the case filed in the District Court in and for Mayes County, State of Oklahoma, has entered a verdict on the question of the intentional nature of the acts complained of in the Petition filed by the defendants, Skinner, and that this Court finds that the plaintiff, American States Insurance Company, is

and was under no duty to defend or indemnify Frances Haus, d/b/a Frances Beauty Shop, and Harold J. Haus.


JAMES O. ELLISON,
United States District Judge


Attorney for Plaintiff


Attorney for Defendants,
Frances Haus, d/b/a Frances
Beauty Shop, and Harold J. Haus


Attorney for Defendants,
Kenneth Skinner and Sandra
Skinner, Husband and Wife,
Natural Parents, Guardians and
Next Friends of Billy Skinner,
a Minor

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Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RAMON J. MARTINEZ,
Plaintiff,

vs.

THE HONORABLE ROGER MULLINS,
et al.,

Defendants.

No. 85-C-305-E

FILED

JUN 14 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

This matter is before the Court on the motions of Defendants to dismiss for improper service and venue, and the motion of Plaintiff to dismiss without prejudice.

The Court finds the above-styled and numbered cause to have been brought in the wrong district, and upon Plaintiff's admission of improper service, finds that the same should be dismissed as to all Defendants.

IT IS THEREFORE ORDERED AND ADJUDGED that this action be dismissed without prejudice.

DATED this 13th day of June, 1985.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES E. CLAYTON,

Petitioner,

vs.

JOHN BROWN, et al.,

Respondents.

No. 84-C-686-E

FILED

O R D E R

JUN 14 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

This matter is before the Court upon the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Petitioner on the 9th of August, 1984.

Petitioner was sentenced by the Tulsa County District Court to fifteen (15) years imprisonment on the 24th of June, 1980, case number CRF-79-2866, for the offense of robbery with firearms. The sentence was pursuant to plea negotiations.

In support of his petition, Mr. Clayton attaches the memorandum of law in support of his application for post conviction relief, which contains the following grounds for relief:

1. The trial court erred in failing to grant the Petitioner's motion to quash the bill of information or to conduct a hearing on the same;
2. The trial court erred in failing to grant a request to develop a record on the factual background of the plea bargain agreement;
3. The trial court erred in failing to grant the

Petitioner's request for production of witnesses in his behalf;

4. The trial court erred in failing to allow Petitioner pro se access to court records and the county law library and the means to contact witnesses to prepare his own defense;
5. The trial court erred in failing to adequately admonish the Petitioner with regard to appearance pro se, as required by Faretta v. California;
6. The trial court erred in failing to grant an appeal in the case;
7. Court records fail to contain true and correct proceedings;
8. The trial court erred in failing to assign other counsel to the Petitioner when it became apparent counsel was ineffective in failing to prepare a proper defense;
9. Petitioner's plea of guilty was not voluntarily, intelligently and knowingly made, and was obtained by deceit and broken plea bargain;
10. The trial court erred in failing to provide a transcript of the court proceedings for the purpose of appeal;
11. The trial court erred in failing to assign counsel for purposes of appeal.

This Court must first concern itself with the nature and voluntariness of Petitioner's plea of guilty to this offense. Claims of constitutional deprivations occurring prior to a guilty

plea are not independent grounds for federal collateral relief, as a guilty plea "represents a break in the chain of events which has preceeded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea". Tollett v. Henderson, 93 S.Ct. 1602, 1608 (1973). The Petitioner may only attack the voluntary and intelligent character of his guilty plea. In this instance, Petitioner has alleged that he had been denied effective legal assistance, that the court failed to replace ineffective counsel, that he was not adequately advised about the disadvantages of appearing pro se, and that the plea bargain under which he had agreed to plead guilty to this offense was breached. In his statement of facts, Petitioner alleges that the agreement in the plea bargain was for three concurrent ten year sentences to be served in three separate offenses. He also claimed that he made his guilty plea after threats that he would receive two hundred years in prison, and possibly up to a thousand years if he did not plead guilty.

It is clear from the transcript of the proceedings on the 24th of June, 1980, in which Petitioner entered his plea of guilty, that Petitioner was fully aware of his right to be represented by counsel, that the plea agreement concerned fifteen year sentences, and not ten year sentences as currently alleged by Petitioner, and that Petitioner was adequately informed of his

right to a jury trial and his right to confrontation of witnesses, and to his right to be represented by counsel in the proceedings. In fact, appointed counsel was standing by during the proceedings to assist the Petitioner if he so desired. Petitioner was adequately informed of his rights under Copenhauer v. The State, 431 P.2d 669 (Okla. Cr. 1967). In fact, Petitioner made his own statement on the record in which he stated that he was aware of his right to a jury trial and to confrontation of witnesses, was aware of the range of punishment, had negotiated a plea agreement for 15 years with the District Attorney's office, and was acting without counsel under his right to do so under Faretta v. California. It is clear from this record that Petitioner's plea of guilty was voluntarily and intelligently made, and that the plea bargain agreement was not in fact breached. Petitioner cannot now attack the ruling of the court with regard to his motion to quash or any other motions he claims were filed and not a part of the record, nor may he attack any alleged denial of his right to law books and witnesses to prepare his defense in the trial of his case.

Petitioner also alleges that, subsequent to his guilty plea, he was denied his statutory right to direct appeal.

The record reflects that Petitioner was informed, during his guilty plea and sentencing hearing, of his right to seek a writ of certiorari to the Court of Criminal Appeals within ninety days from that date, and to file a motion to set aside the judgment and sentence within ten days. Under Oklahoma law, appeals taken

from a conviction on a guilty plea must be taken by a petition for writ of certiorari filed within ninety days from the date of conviction. Rule 4.1 of the Court of Criminal Appeals provides that a defendant must have filed an application to withdraw his guilty plea within ten (10) days from the date of the judgment and sentence which sets forth in detail the grounds for the withdrawal of the plea and requests an evidentiary hearing in the trial court. The trial court must hold an evidentiary hearing and rule on the application within thirty days. No matter may be raised in a petition for writ of certiorari unless it has already been raised in the application to withdraw a plea of guilty. If the application to withdraw has been filed and heard and denied by the trial court, a defendant must file a notice of intent to appeal within ten days from the date of the denial. Petitioner alleges that he was immediately transported to the receiving unit for the Department of Corrections and was not allowed access to forms and the law library. He further alleges that he filed a "notice of appeal" on a preprinted form on July 1, 1980. A review of the record reveals that Petitioner had requested immediate transport, and such was granted at his guilty plea and sentencing hearing. The official docket for case number CRF-79-2866 reveals the filing of a notice of intent to appeal on September 2, 1980. A motion for new trial was filed on October 3, 1980. No withdrawal of guilty plea was ever filed. The proper procedure for an attack on a judgment pursuant to a guilty plea was not followed by Petitioner.

An attack on post conviction proceedings is not properly

considered in a petition for writ of habeas corpus. Pierce v. State of Oklahoma, 436 F.Supp. 1026 (W.D. Okla. 1977); Noble v. Sigler, 351 F.2d 673 (8th Cir. 1965). A writ of habeas corpus must address the propriety of the detention of the Petitioner, and does not contemplate an attack upon proceedings which are collateral to the detention of the Petitioner.

For the foregoing reasons, this Court finds that Petitioner's guilty plea was freely, voluntarily, and intelligently made; that alleged errors committed before the guilty plea cannot be addressed by this Court; and that an attack on a collateral proceeding is not cognizable in a petition for writ of habeas corpus. Therefore the Court finds that Petitioner's application for the writ must be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that the petition for writ of habeas corpus be, and the same is hereby denied.

ORDERED this 13th day of June, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

Entered
FILED
IN OPEN COURT

JUN 14 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES FIDELITY &)
GUARANTY COMPANY, a)
corporation,)
)
Plaintiff,)
)
vs.)
)
TULSA DOZER EQUIPMENT &)
SUPPLY INC., et al.,)
)
Defendants.)

No. 85-C-301-E

ORDER OF PARTIAL DISMISSAL

Upon application of the Plaintiff and by reason of settlement between the parties, Plaintiff's Complaint for Declaratory Relief is herewith dismissed. This order does not otherwise affect the Counter Claim of Tulsa Dozer Equipment & Supply, Inc.

Dated this 14th day of June, 1985.

James DeLeon
U.S. DISTRICT JUDGE

entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SECURITY INVESTMENT COMPANY, an
Oklahoma Corporation,

Plaintiff(s),

vs.

No. 84-C-906-BT

GARY MORGAN,

Defendant & 3rd Party
Plaintiff,

vs.

JOHN ROURKE,

3rd Party Defendant.


JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 14th day of JUNE, 19 85.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

FILED

IN THE UNITED STATES DISTRICT COURT 14 1985
FOR THE NORTHERN DISTRICT OF OKLAHOMA
J. L. OLIVER, CLERK
U.S. DISTRICT COURT

DONNA GILLAM,

Plaintiff,

vs.

NO. 85-C-3012-E

FIREMAN'S FUND AMERICAN
LIFE INSURANCE COMPANY,
a foreign corporation,
and MUTUAL OF OMAHA
INSURANCE COMPANY, a
foreign corporation,

Defendants.

NOTICE OF DISMISSAL

COMES NOW the Plaintiff and hereby dismisses the above cause
of action with prejudice against MUTUAL OF OMAHA INSURANCE COMPANY,
a foreign corporation only.

Dated this 14th day of June, 1985.

DONNA GILLAM,
Plaintiff

By Larry L. Oliver
Larry L. Oliver

LARRY L. OLIVER & ASSOCIATES, INC.
2211 E. Skelly Drive
Tulsa, Oklahoma 74105
(918) 745-6084

BY Anthony M. Laizure
Anthony M. Laizure

STIPE, GOSSETT, STIPE, HARPER,
ESTES, McCUNE & PARKS
P. O. Box 701110
Tulsa, Oklahoma 74170
(918) 745-6084

CERTIFICATE OF MAILING

I hereby certify that on this 14th day of June, 1985, I
mailed a true and correct copy of the above and foregoing instru-
ment with sufficient postage prepaid thereon to: Elsie draper,
20th Floor, Fourth National Bank Building, Tulsa, Ok. 74119.



FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 14 1985

RICHARD GALE	)	Jack C. Silver, Clerk
Plaintiff,	)	U.S. DISTRICT COURT
vs.	)	No. 83-C-966-E
GREAT SOUTHWESTERN EXPLORATION, et. al.,)	
Defendant.)	
and)	
BILLY W. BRYANT, et. al.,)	
Plaintiffs,)	
vs.	)	No. 83-C-1037-E
GREAT SOUTHWESTERN EXPLORATION, et. al.,)	
Defendants,)	
and)	
HOLLIS KENNEMER, et. al.,)	
Plaintiffs,)	
vs.	)	No. 84-C-399-E
GREAT SOUTHWESTERN EXPLORATION, et. al.,	)	(Consolidated)
Defendants.)	

ORDER OF DISMISSAL WITH PREJUDICE

Upon consideration of plaintiffs' filing their Motion To Dismiss With Prejudice, the Court finds that said cause should be dismissed and,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the above entitled cause is hereby dismissed with prejudice against the defendants, Jerry Hall and J. T. Haile d/b/a Haile Petroleum Oil and Gas Production.

Dated this 13th day of June, 1985.

S/ JAMES O. ELLISON

(James O. Ellison)
District Judge

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 14 1985

RICHARD GALE	)	Jack C. Silver, Clerk
Plaintiff,	)	U.S. DISTRICT COURT
vs.	)	No. 83-C-966-E
GREAT SOUTHWESTERN EXPLORATION, et. al.,)	
Defendant.)	
and)	
BILLY W. BRYANT, et. al.,)	
Plaintiffs,)	
vs.	)	No. 83-C-1037-E
GREAT SOUTHWESTERN EXPLORATION, et. al.,)	
Defendants,)	
and)	
HOLLIS KENNEMER, et. al.,)	
Plaintiffs,)	
vs.	)	No. 84-C-399-E
GREAT SOUTHWESTERN EXPLORATION, et. al.,	)	(Consolidated)
Defendants.)	

ORDER OF DISMISSAL WITH PREJUDICE

Upon consideration of plaintiffs' filing their Motion To Dismiss With Prejudice, the Court finds that said cause should be dismissed and,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the above entitled cause is hereby dismissed with prejudice against the defendants, Jerry Hall and J. T. Haile d/b/a Haile Petroleum Oil and Gas Production.

Dated this 13th day of June, 1985.

S/ JAMES O. ELLISON

(James O. Ellison)
District Judge

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 14 1985

RICHARD GALE

Plaintiff,

vs.

GREAT SOUTHWESTERN EXPLORATION, et. al.,
Defendant.

and

BILLY W. BRYANT, et. al.,
Plaintiffs,

vs.

GREAT SOUTHWESTERN EXPLORATION, et. al.,
Defendants,

and

HOLLIS KENNEMER, et. al.,
Plaintiffs,

vs.

GREAT SOUTHWESTERN EXPLORATION, et. al.,
Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 83-C-966-E

No. 83-C-1037-E

No. 84-C-399-E

(Consolidated)

ORDER OF DISMISSAL WITH PREJUDICE

Upon consideration of plaintiffs' filing their Motion To Dismiss With Prejudice, the Court finds that said cause should be dismissed and,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the above entitled cause is hereby dismissed with prejudice against the defendants, Jerry Hall and J. T. Haile d/b/a Haile Petroleum Oil and Gas Production.

Dated this 13th day of June, 1985.

S/ JAMES O. ELLISON

(James O. Ellison)
District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 14 1985

CLYDE SHINDLER,

Plaintiff,

vs.

RALEIGH HILLS HOSPITAL, et al.,

Defendants.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 85-C-256 *e*

ORDER

NOW, on this 14 day of June, 1985, this Court has before it the Motion To Dismiss of defendant Advanced Health Systems, Inc. d/b/a Raleigh Hills Hospital. That defendant appeared specially herein for the purpose of requesting this Court to dismiss this action for insufficiency of process, want of jurisdiction, for failure to state a claim upon which relief may be granted, and for such further relief as the Court may deem just and proper.

After review of said Motion To Dismiss and supporting brief, upon the record in this cause including all other pleadings on file, and being fully informed in the premises, it appears to the Court that Plaintiff has not obtained new counsel within the time heretofore granted, and that plaintiff has not filed a response to the aforesaid Motion To Dismiss; and it further appears to the Court that Plaintiff has made no attempt to serve summons and complaint upon the remaining

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WALTER LEON WILSON,

Plaintiff,

vs.

PETE SILVERS,

Defendant.

No. 85-C-502-E

FILED

JUN 14 1985


Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Pursuant to the request of Plaintiff to drop this civil action, the Court finds that the above-styled and numbered cause should be dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED that this action be, and the same hereby is dismissed without préjudice.

ORDERED this 13th day of June, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 14 1985

OPAL PALMER,

Plaintiff,

v.

PARKER DRILLING COMPANY
OF OKLAHOMA, INC.,
an Oklahoma corporation,

Defendant.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

NO. 84-C-680-B

O R D E R

This matter comes before the Court on defendant Parker Drilling Company's motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court concludes the motion should be sustained.

On February 16, 1977, plaintiff, Opal Palmer, was hired as a janitress on defendant Parker Drilling Company's night cleaning crew. On September 15, 1982, defendant terminated plaintiff and two other cleaning/maintenance personnel, Ms. Ella Edwards and Ms. Renee Wilson. Plaintiff contends she was discharged because of her age. Plaintiff was 60 years old at the time of termination. Ms. Wilson was 26 years of age at termination; Ms. Edwards was 34. Defendant asserts the terminations were motivated by economic reasons and that the decision of which employees to terminate was based upon a review of the work records of all personnel. According to the defendant, the review took into consideration the employee's overall work performance, his or her attitude in working with fellow employees, and the

employee's level of cooperation with his or her supervisor. The decision to terminate was made by Ms. Marie Strong, Building Manager, who had been informed by her superior that the janitorial staff was to be reduced. Strong Affidavit, p.2. Plaintiff, Ms. Edwards and Ms. Wilson had more complaints in their files than any other employees. Id.

The ultimate burden on a plaintiff in an age discrimination case is to prove that she was discharged because of her age. La Montagne v. American Convenience Products, Inc., 750 F.2d 1405, 1409 (7th Cir. 1984). To accomplish this, she must prove not that age was the sole factor motivating the employer to discharge her, but that age was the "determining factor" in the sense that she would not have been discharged "but for" her employer's motive to discriminate against her because of her age. Loeb v. Textron, Inc., 600 F.2d 1003, 1019 (1st Cir. 1979); Perrell v. Financeamerica Corp., 726 P.2d 654, 656 (10th Cir. 1984); EEOC v. Prudential Federal Savings and Loan Assn., Slip Opinion, p. 8 (10th Cir., May 28, 1985). A plaintiff need not prove that the reasons offered by the defendant are false if she proves that age was also a reason, and that age was the factor that made a difference. Id. at pp. 8, 9.

The Supreme Court in the case of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), outlined a four-factor test generally accepted as a guideline for establishing a prima facie case under the Age Discrimination in Employment Act. However, the listed factors are merely guidelines and are not to be applied in a

rigid, inflexible manner in determining whether a prima facie showing has been made. Rather, the standards are to be adapted to the fact situations being considered. McDonnell Douglas, n.13; Mistretta v. Sandia Corp., 649 F.2d 1383, 1386 (10th Cir. 1981).

Defendant urges that plaintiff's case is insufficient because plaintiff cannot show she was replaced by a person either within or outside of the protected class. However, a discharged employee need not show she was replaced when a work force is being reduced. In a reduction in force (RIF) situation, replacement is not an issue because the position is eliminated. McCuen v. Home Insurance Company, 633 F.2d 1150 (5th Cir. 1981); EEOC v. Baltimore & Ohio Railroad, 632 F.2d 1107 (4th Cir. 1980).

In RIF cases, a number of circuits have held that a plaintiff must show age was a factor in his or her discharge rather than show that he or she was replaced by a person outside the protected group. Coker v. Amoco Oil Co., 709 F.2d 1433, 1438 (11th Cir. 1983); Pace v. Southern Railway System, 701 F.2d 1383 (11th Cir. 1983); EEOC v. Western Electric Co., Inc., 713 F.2d 1011, 1014 (4th Cir. 1983). Thus, though the elements of the plaintiff's prima facie case in the "usual" ADEA case are: (1) the plaintiff is in the protected age group; (2) the plaintiff was discharged or demoted; (3) at the time of discharge the plaintiff was performing his job at a level that met his employer's legitimate expectations; and (4) following his discharge, the plaintiff was replaced by someone of comparable

qualifications outside the protected class, the plaintiff in a RIF case must satisfy the first three "usual" elements and (5) produce evidence, circumstantial or direct, from which a fact finder might reasonably conclude that the employer did not treat age neutrally. Western Electric at 1015; Coker at 1438.

In Coburn v. Pan American World Airways, Inc., 711 F.2d 339 (1983), the District of Columbia Circuit opted to address a reduction in force case at the second stage of analysis, where the employer puts on evidence of a nondiscriminatory reason for the firing. Regardless of the procedural posture in which the Court views the evidence, plaintiff has failed to produce evidence from which a fact finder might discover factual inferences tending to show that age was a factor in plaintiff's termination.

Plaintiff has met the first two elements. As to the third element, defendant does not deny that, but for the economic circumstances which mandated a reduction in force on the basis of job performance, plaintiff was performing her job at a level by which she might have retained her position in better economic times.

Plaintiff makes the following statements of fact from which an inference can allegedly be drawn that age was a factor in her discharge:

1. After plaintiff's termination, two of the thirteen nonsupervisory janitorial workers were over the age of forty, whereas before the layoff three of sixteen employees fell within the protected class.

Plaintiff's "statistical evidence of disparate treatment" ignores the fact that two of the three terminated workers were below forty. No inference of discrimination can properly be derived therefrom.

2. Defendant hired a 25 year old on January 26, 1983 and a 47 year old on March 16, 1983.

Plaintiff hereby implies that one or both of these individuals replaced her. Defendant produced evidence showing that the January 26 hire was on a part-time basis for the specific reason of filling in for a hospitalized full-time employee. The part-time employee worked only two weeks and was removed altogether from the employee list on March 11, 1983. Defendant's Ex. "A", Reply Brief. The March 16 hire was for the specific purpose of filling in for vacationing employees on a part-time basis. The individual worked only 2 1/2 weeks and resigned because she obtained full-time work.

3. Many of the younger employees of Parker were involved in serious disciplinary actions without resulting in termination.

The evidence presented, however, indicates that no employees had more unsatisfactory work performance records or more unsatisfactory work attitudes than the three individuals who were terminated. Defendant's Ex. C. Moreover, plaintiff's allegation is unsupported.

4. "Parker hired younger employees within three months preceding the purported "economic layoff" but none of those individuals were terminated, although Mrs. Palmer had the most seniority of the non-supervisory personnel."

Defendant responds that the three individuals, Cynthia Brown (28), Nancy Martin (38), and Sylvia Walker (31), were hired to be "on call" in case of illness or vacations and were strictly part-time employees. Brown was hired June 16, 1981 and resigned on November 9, 1982. Martin was hired June 22, 1982 and resigned on November 9, 1982. Walker was hired April 20, 1982 and resigned June 4, 1982, long before plaintiff's termination in September. The fact these part-time employees were hired within three months (five months with respect to Walker) prior to plaintiff's termination is insufficient to show that defendant's proffered reasons for terminating plaintiff are pretextual.

5. Plaintiff attaches an affidavit to her response to plaintiff's motion for summary judgment stating that her attendance at work and her job performance was above average and that she received frequent compliments. Plaintiff also submits two letters from tenants which compliment her work.

Plaintiff fails to respond to the fact that her file reflected a number of complaints from other tenants (2/20/84 and 4/20/84) concerning her work. Her file also contains notations concerning her inability to get along with co-workers (9/25/80 and 11/3/80), her poor attitude (9/25/80), her lack of cooperation with superiors (9/25/80), and supervisory notes of areas under her responsibility that were not being cleaned. On November 3, 1980, plaintiff was transferred to the Franklin Building in downtown Tulsa due to her alleged inability to get along with co-workers in the Parker Building, of which reason

plaintiff was allegedly informed. Defendant's Ex. C. Plaintiff's self-laudatory statement and the letters submitted on her behalf, in light of other uncontroverted evidence as to her poor job performance, do not raise an inference that age was a determining factor in her discharge. The evidence fails to show that "poor work performance" was a pretext for the termination decision.

6. Someone allegedly represented to plaintiff that a seniority list was "used by my superior with respect to hiring and firing practices and vacation scheduling." Palmer Affidavit, p.1.

How a seniority list could be used as a basis for hiring new employees is rather obscure. Furthermore, plaintiff's statement is ambiguous in that it is unclear whether plaintiff understood the "representation" to mean that senior employees would be discriminated against when reductions in force were made or that they were to be given a preference (but that she was not given such a preference in September of 1981). The context of the statement implies that seniority would be given preference, other things being equal. The representation that plaintiff's supervisor "used the seniority list with respect to firing sheds no light on the issue of whether age was used as a factor in the case where job performance and job attitude factors are unequal. Plaintiff offers no evidence that defendant's policy was to terminate employees solely on the basis of age, or that age was a "determining factor."

7. Plaintiff states in her affidavit that the sole reason given her for her discharge was "economic reasons" and that job performance was never mentioned.

Such a statement, together with its omission of the basis for determining which employees were to be discharged for economic reasons, does not create an inference of age discrimination.

8. Plaintiff contends she has learned that defendant replaced her with a younger employee.

This bald allegation is untrue, as specified above.

Plaintiff has failed to produce a genuine issue of material fact regarding whether age was a factor in her discharge. Because age was apparently not a factor in defendant's decision to terminate plaintiff, defendant's motion for summary judgment is sustained.

ENTERED this 14th day of June, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WALTER LEON WILSON,

Plaintiff,

vs.

PETE SILVERS,

Defendant.

No. 85-C-465-E

FILED

JUN 14 1985


ORDER

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Pursuant to the request of Plaintiff to drop this civil action, the Court finds that the above-styled and numbered cause should be dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED that this action be, and the same hereby is dismissed without prejudice.

ORDERED this 13th day of June, 1985.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

JUN 13 1955

FILED

JUN 13 1955

Case No. 83-C-858-C

U.S. DISTRICT COURT

Tulsa, Oklahoma

Plaintiff, Clark Ellison

Defendants.

Case No. 83-C-858-C

U.S. DISTRICT COURT

Tulsa, Oklahoma

Plaintiff, Clark Ellison

Defendants.

DYCO PETROLEUM CORPORATION,)
)
Plaintiff,)
)
vs.)
)
FAWNMARK MINERALS, LTD., et al.,)
)
Defendants.)

ORDER DISMISSING DEFENDANT CLARK ELLISON

Upon the Motion of Plaintiff, Dyco Petroleum Corporation, to Dismiss Defendant, Clark Ellison, and for good cause shown, the Court, being fully advised in the premises, finds that said Motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Defendant, Clark Ellison, is dismissed without prejudiced from the above captioned case; and,
2. No costs are to be charged against either Plaintiff or Defendant, Clark Ellison.

Date: June 12, 1985

(Signed) H. Dale Cook

United States District Judge

Submitted by:

Paula E. Pyron
Lance Stockwell
Paula E. Pyron
Of BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza, 100 West 5th Street
Tulsa, Oklahoma 74103
(918) 583-1777

ATTORNEYS FOR PLAINTIFF
DYCO PETROLEUM CORPORATION

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
MICHAEL D. GUTHRIE,)	
)	
Defendant.)	CIVIL ACTION NO. 85-C-362-E

DEFAULT JUDGMENT

This matter comes on for consideration this 10th day of June, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Michael D. Guthrie, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Michael D. Guthrie, acknowledged receipt of Summons and Complaint on April 15, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Michael D. Guthrie, for the principal sum of \$524.50, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.68 per month from September 28, 1984,

until judgment, plus interest thereafter at the current legal
rate of 7.70 percent from date of judgment until paid, plus
costs of this action.

S/ JAMES C. ELISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARY L. BALLINGER,

Defendant.

JUN 13 1985

Jack L. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-472-E

AGREED JUDGMENT

This matter comes on for consideration this 12th day of June, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Hubert A. Marlow, Assistant United States Attorney, and the Defendant, Gary L. Ballinger, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that Defendant, Gary L. Ballinger, acknowledged receipt of Summons and Complaint on May 15, 1985. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount of \$1,297.53, as of March 16, 1985, plus the accrued interest of \$312.91 and administrative costs of \$19.29, plus interest at 15.05 percent per annum from March 16, 1985, until judgment, plus interest thereafter at the legal rate from the date of judgment until paid, plus the costs of this action.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Gary L. Ballinger, for the principal sum of \$1,297.53 as of March

16, 1985, plus the accrued interest of \$312.91 and administrative costs of \$19.29, plus interest at 15.05 percent per annum from March 16, 1985, until judgment, plus interest thereafter at the current legal rate of 7.70 percent from the date of judgment until paid, plus the costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Hubert A. Marlow
HUBERT A. MARLOW
Assistant U.S. Attorney

Gary L. Ballinger
GARY L. BALLINGER

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 12 1985

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES E. THORNBURG and
PHYLLIS J. THORNBURG,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

WILLIAM D. SILVER, CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-473-B

NOTICE OF DISMISSAL

COMES NOW the United States of America by
Layn R. Phillips, United States Attorney for the Northern
District of Oklahoma, Plaintiff herein, through Hubert A. Marlow,
Assistant United States Attorney, and hereby gives notice of its
dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure,
of this action without prejudice.

Dated this 10th day of June, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Hubert A. Marlow

HUBERT A. MARLOW
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 12th day of June,
1985, a true and correct copy of the foregoing was mailed,
postage prepaid thereon, to: James E. Thornburg and Phyllis J.
Thornburg, 811 West 22nd Avenue, Stillwater, Oklahoma 74074.

Hubert A. Marlow
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

IN RE:

JUN 12 1985

OIL CAPITOL PRODUCE, INC.,

Debtor,

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JOHN B. JARBOE, TRUSTEE,

Plaintiff,

vs.

No. 85-C-151-E
(CHAPTER 7)

SUNBELT BANK AND TRUST CO.,

Defendant.

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 12th day of June, 1985.


JAMES W. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 12 1985

FRED ELROY TUCKER,
Petitioner,

vs.

JACK G. COWLEY, Warden,
et al.,
Respondents.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 85-C-2-E

O R D E R

NOW on this 12th day of June, 1985 comes on for hearing the above styled case and the Court, being fully advised in the premises finds:

Petitioner brings this action for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is presently incarcerated in Jess Dunn Correctional Facility pursuant to a judgment and sentence rendered in the District Court of Tulsa County, Case number CRF-78-3195. Petitioner then filed a direct appeal in Oklahoma Court of Criminal Appeals. The conviction was modified and affirmed.

Petitioner alleges error in that the combined effect of several prosecutorial comments constituted prejudice and error in the trial court's failure to sustain Defendant's motion to suppress evidence.

The allegedly prejudicial comments and effects thereof are first that prosecution's reference to prosecutor, jury and judge

as capable of perceiving a witness' credibility from the same general standpoint caused the jury to view the prosecution, judge and jury as a united front against the Petitioner and in favor of the victim. Secondly Petitioner objects to prosecutor's remark that Petitioner was a coward.


The Court finds that these two objections were not properly preserved for appeal. Petitioner neither objected to these remarks at trial nor requested court to admonish jury to disregard them. This Court finds that such remarks were not fundamentally prejudicial and therefore Petitioner is deemed to have waived any objections thereto. McCall v. State, Okl.Cr. 539 P.2d 418 (1979).

Petitioner also urges that the prosecutor overstepped the bounds of proper argument when he referred to Petitioner's potential intent to kill the robbery victim. This Court disagrees. The prosecutor is free to discuss the evidence and reasonable inferences arising therefrom. Deason v. State, Okl.Cr. 576 P.2d 778 (1978). The record reflects that during the course of the robbery Petitioner held a gun to Mr. Waites' head and stated several times, "I ought to kill you." Such statements could give rise to a reasonable inference that Petitioner contemplated shooting Waites. Therefore the prosecutor's statement was not prejudicial error.

Finally Petitioner claims that the trial court erred in denying motion to suppress denim jacket. Court of Criminal

Appeals properly held and this Court finds that the jacket falls within the plain view exemption to the warrant requirement in that the officer was lawfully on the premises, the finding of the jacket was inadvertent and it was immediately apparent that the jacket was evidence of a crime since the victim's description of the robber included a denim jacket.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's writ of habeas corpus be and is hereby denied.



JAMES G. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 12 1985

PATRICIA RULE, an individual, and)
GREGORY SANDELLA, an individual,)
)
Plaintiffs,)
)
v.)
)
MOODY'S JEWELRY, INCORPORATED, an)
Oklahoma corporation; ERNEST MOODY, JR.,)
an individual; and DETECTIVE J. BROWN,)
an individual,)
)
Defendants.)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 84-C-350-E

ORDER

AND NOW, ON THIS 12th day of June 1985, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, stipulation of the parties hereto of dismissal, parties hereto having advised the Court that all disputes between the parties have been settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above styled case be and the same is hereby dismissed with prejudice to the right of the plaintiff to bring any future action arising from said cause of action.

S/ JAMES O. ELLISON

JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA

FILED

JOURNAL ENTRY OF JUDGMENT

The Court finds that plaintiff is entitled to recover judgment from the defendant in the amount of \$24,466.55, together with interest thereon from October 12, 1984, at the rate of twelve percent (12%) per annum until said amount is paid, and all accruing court costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against the defendant, Universal Energy Corporation, for the sum of \$24,466.55, together with interest at the rate of twelve percent (12%) per annum from October 12, 1984 until said judgment shall be paid, and all accruing court costs.

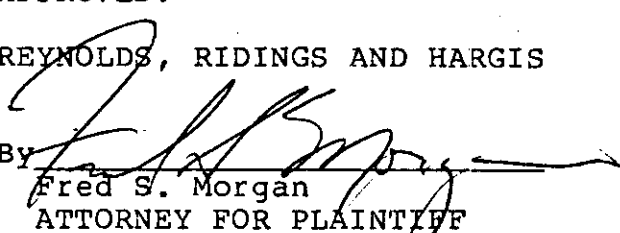
(Signed) H. Dale Cook

Judge of the United States District
Court, Northern District

APPROVED:

REYNOLDS, RIDINGS AND HARGIS

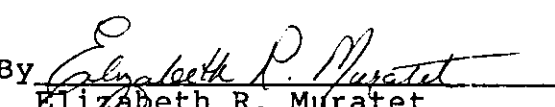
By


Fred S. Morgan
ATTORNEY FOR PLAINTIFF

2808 First National Center
Oklahoma City, Oklahoma 73102

WADDEL & BUZZARD

By


Elizabeth R. Muratet
ATTORNEY FOR DEFENDANT

1500 One Boston Plaza
20 East 5th Street
Tulsa, Oklahoma 74103

Entered

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 14 1985

DANNY JOE WADLOW,
Plaintiff,

Jack C. Silver, Clerk
U. S. DISTRICT COURT

vs.

No. 84-C-609-E

JACK TANNER, Sheriff of
Rogers County, Oklahoma,
et al.,

Defendants.

O R D E R

There being no response to the Defendants' motion for summary judgment and more than two (2) months having passed since the filing of the motion and response time having passed beyond extension of time granted upon Plaintiff's application for same, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiff has therefore waived any objection or opposition to the Defendants' motion for summary judgment. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Defendant's motion for summary judgment is therefore granted. All other motions are therefore rendered moot.

DATED this 12th day of June, 1985.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entitled

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 11 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

VAN LEE LOWE, JR.,
Plaintiff,
v.
BOB NIXON, K.W. SCRIBNER,
and S.H. NEWTON,
Defendants.

No. 84-6-278-E

O R D E R

Based on the Joint Motion Filed by Plaintiff and Defendants on the 7th day of June 1985, and pursuant to the announcement of the parties at the pre-trial conference held on the 4th day of June, 1985,

IT IS ORDERED that Defendant Newton be, and he his hereby, dismissed from Count I of Plaintiff's Complaint, with prejudice.

James O. Allison
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BRENDA J. COLLINS, et al.,)
)
 Plaintiffs,)
)
vs.)
)
EDG ENGINEERING, INC., an)
Oklahoma corporation, et al.,)
)
 Defendants.)

No. 82-C-1107-C


FILED

JUN 10 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT


JOINT NOTICE OF DISMISSAL
OF CLAIMS OF E. LOUISE RAPER ONLY

Plaintiff E. Louise Raper, only, by and through her attorney, and the defendants, by and through their attorneys, would stipulate that this matter is dismissed with prejudice pursuant to F.R.C.P. 41, and stipulate that each side should bear their own attorney fees and costs.


D. Gregory Bledsoe
1515 South Denver
Tulsa, Oklahoma 74119
(918) 599-8118

Attorney for E. Louise Raper

JONES, GIVENS, GOTCHER,
DOYLE & BOGAN, INC.

By 
Michael J. Gibbens
201 West Fifth, Suite 400
Tulsa, Oklahoma 74103
(918) 581-8200

Attorneys for Defendants

Entered

FILED

O.B. JUN 10 1985

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN RE:

IMPERIAL COAL COMPANY,
Debtor.

)
)
) Case No. 80-00147
)
)

85-C-351-E

O R D E R

The Stipulation of the Trustee for Imperial Coal Company, debtor (Debtor) and Albert Equipment Co., Inc., Movant (Albert) has been filed herein, considered by the Court and the Court being fully advised in the premises finds that the Motion For Leave To Appeal Interlocutory Order filed herein on the 5th day of April, 1985, should be stricken as moot.

IT IS THEREFORE, ORDERED that the Motion For Leave To Appeal Interlocutory Order filed herein by Albert on the 5th day of April, 1985 is hereby stricken as moot.

DATED this 7th day of June, 1985.

JAMES O. FURSON

United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Entered
FILED

JUN 10 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

PHILLIP L. JOHNSON,)

Defendant.)

CIVIL ACTION NO. 85-C-266-E

DEFAULT JUDGMENT

This matter comes on for consideration this 7th day
of June, 1985, the Plaintiff appearing by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney, and the Defendant, Phillip L. Johnson, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendant, Phillip L. Johnson, was served
with Summons and Complaint on April 29, 1985. The time within
which the Defendant could have answered or otherwise moved as to
the Complaint has expired and has not been extended. The
Defendant has not answered or otherwise moved, and default has
been entered by the Clerk of this Court. Plaintiff is entitled
to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the
Plaintiff have and recover judgment against Defendant, Phillip L.
Johnson, for the principal sum of \$1,929.25, plus accrued
interest of \$502.62 as of January 21, 1985, plus interest on the

principal sum of \$1,929.25 at 7 percent from January 21, 1985,
until paid, plus costs of this action.

S/ JAMES O. ELISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALAN S. TIPTON,

Defendant.

JUN 1 1985

Jack C. Smith, Clerk
U.S. District Court

CIVIL ACTION NO. 85-C-263-E

ORDER OF DISMISSAL

Now on this 16 day of June, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Alan S. Tipton, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

-Entitled

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DUNKIN' DONUTS OF AMERICA, INC.,)
a Massachusetts corporation)
domesticated in Oklahoma,)

Plaintiff,)

v.)

No. 85-C-314-C

EDWARD W. KEEFNER, JR. and)
GAIL M. KEEFNER,)

Defendants.)

FILED

JUN 10 1985


Jack C. Silver, Clerk
U. S. DISTRICT COURT

NOTICE OF DISMISSAL

TO: Mr. Ted M. Riseling
Doyle, Harris & Riseling
1414 South Galveston
Tulsa, Oklahoma 74127
Attorney for the Defendants

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 41(a)(1)(i), Fed.R.Civ.P., prior to the service by the Defendants of an answer or a motion for summary judgment, the Plaintiff herewith and hereby through its undersigned counsel dismisses this action without prejudice.

Dated: June 6, 1985.


PETER G. PIERCE III, #7155

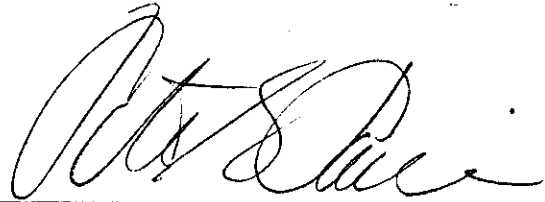
OF COUNSEL:

CARSON, RAYBURN, PIERCE & MUELLER
Coppertree Centre, Second Floor
3727 N.W. 63rd Street
Oklahoma City, OK 73116
(405) 848-8022

Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument was deposited in the U. S. Mail, postage prepaid, on the 7th day of June, 1985, addressed to Mr. Ted M. Riseling, Doyle, Harris & Riseling, 1414 South Galveston, Tulsa, Oklahoma 74127, Attorneys for Defendants.

A handwritten signature in dark ink, appearing to read "Peter G. Pierce III", written over a horizontal line.

PETER G. PIERCE III

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN -7 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

H. D. McWHORTER, FRED DOVER
and TED DUNCAN,

Plaintiffs

vs.

FOSTER WHEELER ENERGY
CORPORATION, AND INTER-
NATIONAL BOILERMAKERS
UNION,

Defendants.

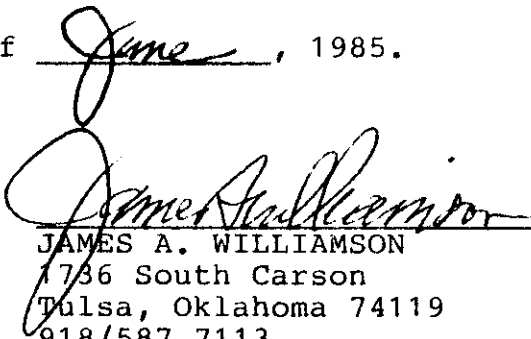
No. 84-C-1014E

State Court Case No. C-84-558

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiffs, H. D. McWhorter, Fred Dover and Ted Duncan, and the Defendants, Foster Wheeler Energy Corporation and International Boilermakers Union, advise the Court that pursuant to Rule 41 (a)(1)(ii), Fed.R.Civ.P., the Plaintiffs, H. D. McWhorter, Fred Dover and Ted Duncan, and the Defendants, Foster Wheeler Energy Corporation and International Boilermakers Union, jointly stipulate that the above named Plaintiff's action against the Defendants, Foster Wheeler Energy Corporation and International Boilermakers Union, be dismissed with prejudice, the parties to bear their respective costs, including all attorney's fees and expenses of this litigation.

DATED this 7 day of June, 1985.


JAMES A. WILLIAMSON

1736 South Carson

Tulsa, Oklahoma 74119

918/587-7113

ATTORNEY FOR PLAINTIFFS

INTERNATIONAL BOILERMAKERS UNION

BY Michael J. Stapp
MICHAEL J. STAPP
BLAKE & UHLIG, P.A.
475 New Brotherhood Building
Kansas City, Kansas 66101

BY William K. Powers
WILLIAM K. POWERS
SHORT, HARRIS, TURNER & DANIEL
2761 East Skelly Drive, Suite 700
Tulsa, Oklahoma 74105

FOSTER WHEELER ENERGY CORPORATION

BY O. B. Johnston, III
O. B. JOHNSTON, III
LOGAN, LOWRY, JOHNSTON, ET AL.
101 South Wilson Street
P. O. Box 558
Vinita, Oklahoma 74301

BY Stuart Rothman
STUART ROTHMAN
ROGERS & WELLS
1737 H Street, N.W.
Washington, D.C. 20006

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KENNETH EUGENE VIRE,
Plaintiff,

v.

JERRY SILER, MARK ZUMWALT
and BARBARA L. FARMER,

Defendants.

No. 85-C-75-B

FILED

JUN - 6 1985

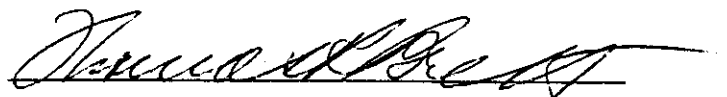
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

On June 4, 1985, the parties in this action appeared through counsel and represented to the Court an agreement had been reached for dismissal of this case.

THEREFORE, pursuant to the agreement of the parties, the Court hereby dismisses this action with prejudice against Barbara L. Farmer and without prejudice against defendants Jerry Siler and Mark Zumwalt.

ENTERED this 7th day of June, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WITTIG ALUMINUM CO., an
Oklahoma corporation,

Plaintiff,

v.

LARRY V. THOMASON d/b/a
L.V. THOMASON & CO.,

Defendant.

No. 84-C-783-B

FILED

JUN - 6 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

This action was filed September 18, 1984. On March 5, 1985, the matter was called for status conference, and counsel for plaintiff advised the Court he had been unable to serve defendant personally and would attempt to serve the defendant by publication.

On June 5, 1985, the matter was again called for status conference, and counsel for plaintiff did not appear. The record indicates plaintiff has still not served defendant. Therefore, pursuant to F.R.Civ.P. 41(b), this case is dismissed without prejudice for failure to prosecute.

ENTERED this 7 day of June, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ELZORA M. WALKER,)
)
Plaintiff,)
)
v.)
)
ARMCO, INC., a foreign)
corporation,)
)
Defendant.)

No. 84-C-462-B

F I L E D

JUN - 6 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

In keeping with the Court's order of June 4, 1985, sustaining the motion for summary judgment of defendant, Armco, Inc., judgment is hereby entered in favor of Armco, Inc., and against plaintiff, Elzora H. Walker, with costs awarded against plaintiff.

ENTERED this 7 day of June, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

UTICA NATIONAL BANK & TRUST
COMPANY, a national banking
association,

Plaintiff,

vs.

LESLIE E. SINGLETARY,

Defendant.

No. 84-C-764-B

JUN -5 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

This action came on before the Court on motion for summary judgment of plaintiff Utica National Bank & Trust Company, and defendant Leslie E. Singletary having confessed judgment in favor of plaintiff on its promissory note claim against her,

IT IS ORDERED AND ADJUDGED that the plaintiff Utica National Bank and Trust Company recover of the defendant Leslie E. Singletary the sum of \$10,300.00, prejudgment interest of \$1,425.47 as provided in the agreed order confessing judgment, postjudgment interest at the rate of 8.57 per cent as provided by law, and costs in the amount of \$63.00 as provided in the agreed order confessing judgment, filed contemporaneously herewith.

Dated at Tulsa, Oklahoma this 5th day of June, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN - 5 1984 *hm*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

GUIDON OIL & GAS, INC.,
Plaintiff,

vs.

BLACK HORSE WELL SERVICE, INC.,
Defendant.

No. 83-C-150-E ✓

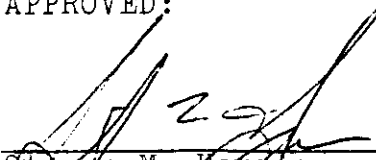
C R D E R

NOW on this 29th day of February, 1984, comes on for hearing the Application to Assess Attorney Fees incurred by defendant in the above styled action and the Court, having heard testimony and argument concerning the number of hours and the reasonableness of the hourly rate, and being otherwise fully advised in the premises, finds that defendant shall be granted an attorney fee of \$6,880.00 as costs in this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that defendant, Black Horse Well Service, Inc., be given judgment against plaintiff, Guidon Oil & Gas, Inc., for an attorney's fee of \$6,880.00.

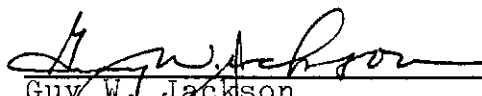
James O. Ellison
JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:



Steven M. Harris
Gasaway, Green & Harris, P.A.
Post Office Box 14070
Tulsa, Oklahoma 74104
(918) 742-0548

Attorneys for Plaintiff



Guy W. Jackson
302 Energy Plaza
3030 Northwest Expressway
Oklahoma City, Oklahoma 73112
(405) 946-7033

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

UTICA NATIONAL BANK & TRUST
CO., a national banking
association,

Plaintiff,

vs.

ROBERT G. HEERS, et al.,

Defendants.

JUN -5 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Case No. 85-C-512-E

NOTICE OF PARTIAL DISMISSAL
WITHOUT PREJUDICE

To: Richard S. Nemelka
Cannon, Cawley, Nemelka, Blakesely
& Woodbury
56 East Broadway, Suite 600
Salt Lake City, Utah 84111

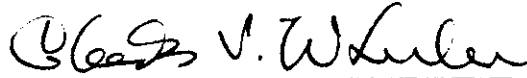
Please take notice that the claim of Plaintiff,
Utica National Bank & Trust Co., against Richard S. Nemelka,
trustee of Richard S. Nemelka Living Trust asserted in this
action is hereby dismissed without prejudice.



Charles V. Wheeler
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of June, 1985, I mailed a true and correct copy of the above and foregoing Notice of Partial Dismissal Without Prejudice to Mr. Richard S. Nemelka, Cannon, Cawley, Nemelka, Blakesley & Woodbury, 56 East Broadway, Suite 600, Salt Lake City, Utah 84111, with proper postage prepaid and affixed thereto.



Charles V. Wheeler

Entered

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

JUN -5 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

EMORY J. ETHRIDGE,)
)
Plaintiff,)
)
vs.)
)
THE AMERICAN NATIONAL)
BANK OF BRISTOW,)
AND EVELYN NORRIS,)
)
Defendants,)
)
vs.)
KATIE WHITEHAWK,)
)
Third party defendant,)

Case No. 83-C-1074-C

ORDER

This cause on to be heard before this 5th day of June,
1985, for good cause shown, the Motion of The American National Bank of
Bristow for Dismissal Without Prejudice against Third Party Defendant
Katie Whitehawk is HEREBY GRANTED.

s/H. DALE COOK

Unite States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN -5 1985

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANITA M. WEBSTER,

Defendant.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-264-C

DEFAULT JUDGMENT

This matter comes on for consideration this 5 day of June, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Anita M. Webster, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Anita M. Webster, was served with Summons and Complaint on April 22, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Anita M. Webster, for the principal sum of \$1,628.30, plus accrued interest of \$120.53 as of January 29, 1985, plus interest on the

principal sum of \$1,628.30 at 7 percent from January 29, 1985,
until paid, plus costs of this action.


UNITED STATES DISTRICT JUDGE

Entered

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN -4 1985

ELZORA M. WALKER,

Plaintiff,

v.

ARMCO, INC., a foreign
corporation,

Defendant.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

NO. 84-C-462-B

O R D E R

This matter comes before the Court on the motion for summary judgment of defendant Armco, Inc. Plaintiff has objected to the motion. For the reasons set forth below, the motion for summary judgment is sustained.

This is an action under 29 U.S.C. §1132(a)(1)(B) to recover benefits plaintiff alleges are due to her under an ERISA plan. Plaintiff's husband, Orvil L. Walker, was employed by Armco, Inc., in Sand Springs, Oklahoma, from 1946 until his retirement in July 1981. Orvil L. Walker was a member of a bargaining unit represented by the United Steelworkers of America. The United Steelworkers and Armco entered into a pension agreement in July 1980 which covered those employees in the bargaining units. On July 27, 1981, Orvil L. Walker signed a "Notice of Option Provisions" form revoking the "Automatic 50% Spouse Option," and declining to elect any other option.

If Orvil Walker had not executed the revocation of the automatic spouse option, he would have received a reduced monthly

26

pension during his lifetime, but his wife, Elzora Walker, would, after his death, have received during her life a co-pensioner benefit of an amount equal to one-half of what Orvil had received, plus any surviving spouse's benefit to which she was entitled. Since Orvil revoked the automatic 50% spouse option, he was entitled to receive the full amount of his pension benefits during his life, but after his death his spouse was entitled to receive only a surviving spouse's benefit and no co-pensioner benefit.

Orvil retired from Armco on July 31, 1981, and received the full amount of his pension until his death on March 19, 1982. Plaintiff began receiving her surviving spouse benefit effective as of April 1, 1982.

Plaintiff seeks reformation of the retirement plan to give her the right to a co-pensioner benefit, on the grounds that 1) Armco was negligent in its dealing with Orvil Walker regarding the signing of the revocation; 2) Armco and its benefits supervisor, Bill Ihrig, breached their fiduciary duty to the employee; and 3) the revocation is void for unilateral mistake.

Defendant, in support of its motion for summary judgment, contends plaintiff's claim for negligence is pre-empted by the provisions of ERISA, and that it fulfilled all fiduciary duties imposed by ERISA. Defendant further contends reformation for unilateral mistake is permissible only where there is fraud on the part of another party.

PRE-EMPTION OF REMEDIES

In enacting ERISA, Congress specifically pre-empted any state law which relates to defined employee pension plans. 29 U.S.C. §1144(a). Likewise, Congress has provided remedies in ERISA for violation of these duties, which pre-empt state remedies. Dependahl v. Falstaff Brewing Corp., 653 F.2d 1208 (8th Cir. 1981), cert. den. 454 U.S. 1084 (1981). Plaintiff's claim of common law negligence, therefore, is not actionable and summary judgment on that claim is appropriate.

DUTIES OF DEFENDANT UNDER ERISA

Defendant, under ERISA, is required to give all participants a written notice explaining the election to take a joint and survivor annuity or to revoke the annuity. I.R.C. §401(a)(1); 29 U.S.C. §1055, Treas. Reg. §1.401(a)-11(c)(3)(i)(C)(1981). The following explanation of benefits must be provided:

"(C) A general explanation of the relative financial effect on a participant's annuity of either or both elections, as the case may be.

Various methods may be used to explain such relative financial effect. With regard to a qualified joint and survivor annuity, they include: information as to the benefits the participant would receive under the qualified joint and survivor annuity stated as an arithmetic or percentage reduction from a single life annuity; a table showing the difference between a straight life annuity and a qualified joint and survivor annuity in terms of a reduction in dollar amounts; a table showing a percentage reduction from the straight life annuity or, in the case of a profit-sharing plan, an approximate dollar amount reduction. The notice and explanation required by this subdivision (i) must also inform the participants of the availability of the additional information specified in subdivision (iii) of this subparagraph and how they may obtain such information."

Treas. Reg. §1.401(a)-11(c)(3)(i)(c) (1981).

ERISA also requires a plan fiduciary to discharge his responsibilities:

"with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims...."

29 U.S.C. §1104(a)(1).

The undisputed evidence shows that Ihrig provided Orvil Walker with a Notice of Options Provisions form which contained a table of estimated benefits payable to Walker under each of the available options. Underneath the table, the revocation of the automatic 50% spouse option was checked, and the form was signed by Orvil Walker. The Court finds Armco complied with the requirements of Treas. Reg. §1.401(a)-11(c)(3)(i)(d)(1977).

Plaintiff contends, however, that Ihrig failed to discharge his duty to act with the care, skill, prudence and diligence of a prudent man acting in a like capacity and familiar with such matters, in that Ihrig knew or should have known Walker was terminally ill, and Ihrig should have advised Walker not to revoke the automatic 50% spouse option.

Ihrig testified in his deposition that, although he knew Walker was ill and had undergone surgery, he did not know Walker was terminally ill. (Ihrig deposition, pp. 7-8). He testified that it was his custom to review the option form with the employee and explain how much the employee would get under each

option. (Ihrig deposition, p. 24). He further testified that he did not recommend to employees which option to take and could not advise them on the decision. (Ihrig deposition, p. 38).

ERISA does not impose upon fiduciaries the duty to give beneficiaries individualized attention and information other than the written information required by ERISA. Hopkins v. FMC Corp., 535 F.Supp. 235 (W.D.N.C. 1982) Appendix B; Shlomchik v. Retirement Plan of Amalgamated Ins., 502 F.Supp. 240 (E.D.Penn. 1980); Allen v. Atlantic Richfield Retirement Plan, 480 F.Supp. 848 (E.D.Penn. 1979) Appendix B.

In this case, defendant provided Orvil Walker with the written information required under ERISA. There is no evidence Ihrig knew or should have known of Walker's condition. Therefore, the Court finds the defendant has complied with all fiduciary duties required under ERISA and is entitled to summary judgment on plaintiff's claim of breach of fiduciary duty.

REFORMATION FOR MISTAKE

Plaintiff contends Orvil Walker mistakenly elected the revocation of the 50% spouse option, and she seeks reformation of the contract to reflect his true intent to receive the benefit.

In this regard, plaintiff alleges Orvil Walker's eyesight was failing at the time he signed the revocation, and that he expressed to her subsequently his intent that she receive a co-pensioner benefit after his death.

Although rescission of a contract is available in some cases of unilateral mistake, reformation of contract for unilateral mistake is not. Hearne v. The New England Mutual Marine Insurance Company, 87 U.S. 488 (1874); Williston on Contracts, Third Edition §1573. Thus, unilateral mistake, unless it is accompanied by fraud, does not justify reformation of the contract. Audio Fidelity v. Pension Ben. Guaranty Corp., 624 F.2d 513 (4th Cir. 1980); Williston on Contracts, Third Edition §631.

Plaintiff has presented no evidence of fraud on the part of defendant. Therefore, the remedy of reformation is not available.

Rule 56 of the Federal Rules of Civil Procedure provides summary judgment is proper when no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. Bruce v. Martin-Marietta, 544 F.2d 442, 445 (10th Cir. 1974); Ando v. Great Western Sugar Co., 475 F.2d 531, 535 (10th Cir. 1973). The Court has concluded no material issues of fact remain, and defendant is entitled to judgment on all claims of plaintiff. Therefore, defendant's motion for summary judgment is sustained.

ENTERED this 4 day of June, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

JUN - 4 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CAROLYN BRUTON,
Plaintiff,
vs.
MCNEILAB, INC.,
Defendant.

No. 85-C-155-E

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 4TH day of June, 1985.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Entered
FILED

JUN 4 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN RE:)
)
NORTHWEST EXPLORATION COMPANY,)
)
Debtor.)
)
TEXAS GENERAL PETROLEUM CORP.,)
)
Appellant,)
)
v.)
)
NORTHWEST EXPLORATION COMPANY,)
)
Appellee.)

Case No. 82-01534

District Court No.
84-C-280-B

ORDER


This matter comes before the Court on the motion to dismiss appeal, filed by the Northwest Exploration Company Creditors Trust, the Reorganized Debtor pursuant to the Plan of Reorganization filed in Chapter 11 proceedings entitled Northwest Exploration Company, Debtor, Case No. 82-01534. Appellant, Texas General Petroleum Corp., has not responded to the motion. Therefore, pursuant to Rule 14 of the Local Rules of the Northern District, the Court deems the matter urged in the motion to dismiss appeal to be confessed by appellant.

The record on appeal in this matter was certified and filed in the United States District Court Clerk's Office on January 17, 1985. Pursuant to a letter from Jack C. Silver, Clerk of the United States District Court for the Northern District of Oklahoma, dated January 18, 1985, addressed to the parties to this appeal, the briefing time in this matter commenced on January 17, 1985.

Pursuant to Bankruptcy Rule 8009(a)(1), appellant, Texas General Petroleum Corp., was required to serve and file its brief within 15 days of January 17, 1985. Appellant did not file its brief within this time period and has never filed its brief.

Therefore, the Court orders this appeal dismissed for failure to prosecute, pursuant to F.R.Civ.P. 41(b).

ENTERED this 4 day of June, 1985.

A handwritten signature in cursive script, reading "Thomas R. Brett", with a large, stylized flourish at the end.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Entered

FILED

JUN -4 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

BURLESON PROPERTIES, INC.,)
Debtor,)
PETITIONING CREDITORS,)
Appellant,)
v.)
BURLESON PROPERTIES, INC.,)
Appellee.)

No. 84-C-891-B

ORDER

On November 4, 1984, Petitioning Creditors filed a notice of appeal from the final judgment for dismissal denying creditors' petition, of the U.S. Bankruptcy Court for the Northern District of Oklahoma. On February 12, 1985, the record on appeal of this matter was filed. Pursuant to Bankruptcy Rule 8009(a)(1), the appellant was required to file its brief in support of appeal within 15 days of February 12, 1985. Appellant has failed to so file, or to request an extension of time to file.

Therefore, pursuant to F.R.Civ.P. 41(b), this action is dismissed for failure to prosecute.

ENTERED this 4 day of June, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN -4 1985

VIDEO COMMUNICATIONS, INC., et al)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Plaintiff(s),)

vs.)

No. 83-C-765-BT

THE VIDTRONICS COMPANY, INC.,
et al)

Defendant(s).)

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 4th day of JUNE, 1985.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

- Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN -4 1987

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

DAVIS S. CARSON,

Plaintiff,

v.

KATHLEEN ROBINS, CHARLOTTE ORREN,
and DOROTHY ROSENBERG,

Defendants.

No. 84-C-645-B

O R D E R

This matter comes before the Court on appeal by Davis S. Carson of the Bankruptcy Court's ruling denying him a discharge from debts allegedly owed to Kathleen Robins, Charlotte Orren and Dorothy Rosenberg, appellees. The appellees have responded to the appeal. For the reasons set forth below, the appeal is denied.

SUMMARY OF FACTS

The debtor appellant, Davis S. Carson, filed a Voluntary Petition and Schedules with the U. S. Bankruptcy Court for the Northern District of Oklahoma, Case No. 82-00215, requesting relief in accordance with Chapter 7 of the U. S. Bankruptcy Code.

Thereafter, the several appellees, Dorothy Rosenberg, Charlotte Orren, and Kathleen Robins, filed separate complaints, Adversary Nos. 82-0320, 22 and 24, respectively, claiming that the debtor was a partner in G&C Development Company, a Kansas partnership, and that each had invested money in three separate oil and gas wells pursuant to joint venture agreements entered

into with said partnership. The complaints further alleged that the debtor appellant had made fraudulent representations to them which induced them to enter into the agreements, and therefore, they were entitled to a return of their investments. The complaints prayed the Court to deny the debtor appellant a discharge in bankruptcy for the amounts of said investments pursuant to 11 USCS 523 (a)(2)(A) which provides:

"(a) A discharge under section 727, 1141, or 1328(b) of this title, does not discharge an individual debtor from any debt --
 (2) for obtaining money, property, services, or an extension, renewal, or refinancing of credit by --
 (A) false pretenses, a false representation, or actual fraud..."

The names of the oil and gas wells and the dates of the joint venture agreements are as follows:

Chambers #1 November 27, 1978;
Phannenstiel #1B. August 1, 1979;
Phannenstiel #1 September 6, 1979.

The consolidated adversary cases came on for trial before Mickey D. Wilson, Bankruptcy Judge, on June 27, 1984. The court entered favorable verdicts to the debtor appellant on the dischargability of the investments in the first and third wells, the Chambers #1 and the Phannenstiel #1; and granted a discharge of these unsecured claims. On the second well, the Phannenstiel #1B, the court found that there were false representations made with the intention and purpose of inducing and enticing the appellees to invest in the joint venture and denied the debtor appellant a discharge of the unsecured claims of the appellees for a return of their investments in the following amounts:

Dorothy Rosenberg . . . \$3,239.38 plus statutory interest from August 1, 1979;

Charlotte Orren \$3,239.38 plus statutory interest from August 1, 1979;

Kathleen Robins . . . \$12,957.50 plus statutory interest from August 1, 1979.

The false representations were made in a long distance telephone conversation on July 27, 1979 from the debtor appellant, Davis S. Carson, and the field operator Gerald Gearhart, on one end of the line in Kansas, and Solly Robins and Bernard Rosenberg, the attorney husbands of the appellees Kathleen Robins and Dorothy Rosenberg, respectively, on the other end of the line in Minnesota. The Bankruptcy Court found during that conversation representations were made to the effect

"that this well is a very good well. That they were going through two zones of Mississippi sand or Mississippi structure, and that the production in the first zone is 15 to 40 barrels per day. The second zone is 60 to 65 barrels per day at which time certain monetary amounts are mentioned. That at the time of these utterances and these representations Mr. Carson knew or should have known that the same were false, and that the same were made with intention and purpose of inducing and enticing the creditors, the Plaintiffs and each of them, to rely upon the same for the purposes of investing in and forwarding money to Mr. Carson concerning what this Court knows as the Phannenstiel 1B. Of course, the Plaintiffs relied upon said representations and have suffered damages thereby."

APPLICABLE LAW

Rule 8013 of the Rules of Bankruptcy Procedure provides:

"On appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy court's judgment or order, or decree or remand with instructions for further proceedings. Findings of fact shall not be set

aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses."

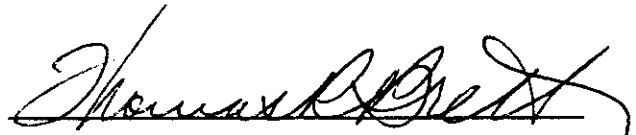
See also United States v. United States Gypsum Company, 333 U.S. 364, 394-395 (1948); In re McGinnis, 586 F.2d 162, 164 (10th Cir. 1978); Stim v. Simon, 284 F.2d 58, 60 (2nd Cir. 1960); In re Sheehan, 350 F.Supp. 907, 910 (W.D.Mo. 1972).

The Court has reviewed the evidence presented and concludes the decision of the bankruptcy judge was not clearly erroneous.

Appellees presented evidence that Carson made representations that the Chambers #1 well would produce large quantities of oil and appellees would be receiving large distributions of their proportionate share of proceeds from the sale of oil from the lease. Appellees also presented evidence that, based on information available to Carson, Carson knew the representations were false and misleading. There is sufficient evidence to support the bankruptcy judge's finding that (1) Mr. Carson knew or should have known that his statements made on July 27, 1974 to Mr. Robins and Mr. Rosenberg concerning anticipated production were false; (2) that they were made with the intention of enticing the plaintiffs into investing in the Phannenstiel 1B; and (3) that the plaintiffs relied upon such representations and thereby suffered damages.

The Court concludes the ruling of the bankruptcy judge was not clearly erroneous and therefore this appeal must be denied. The judgment of the Bankruptcy Court is hereby affirmed.

DATED this 4 day of June, 1985.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN -4 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

THE BOARD OF TRUSTEES OF THE
PIPELINE INDUSTRY BENEFIT FUND,

Plaintiff,

vs.

SPINIELLO CONSTRUCTION COMPANY,

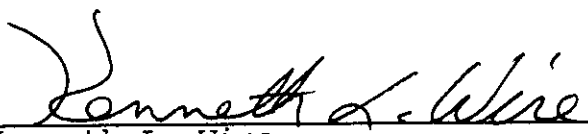
Defendant.

No. 85-C-509-C

NOTICE OF DISMISSAL

Comes now the plaintiff in the above styled and numbered cause and states that all issues, controversies, debts and liabilities between the parties hereto have been paid, settled and compromised, and said plaintiff hereby dismisses this action.


DATED this 4th day of June, 1985.



Kenneth L. Wire
MARSH & ARMSTRONG
406 South Boulder, Suite 600
Tulsa, Oklahoma 74103
918/587-0141
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I, Kenneth L. Wire, hereby certify that on the 4th day of June, 1985, a full, true and correct copy of the above and foregoing Notice of Dismissal was mailed to Spiniello Construction Company, defendant herein, 25 Airport Road, Morristown, New Jersey 07960, with proper postage prepaid thereon.


Kenneth L. Wire

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JUN -4 1985
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

KENNETH A. WASHINGTON,)

Defendant.)

CIVIL ACTION NO. 85-C-364-B

DEFAULT JUDGMENT


This matter comes on for consideration this 4th day
of June, 1985, the Plaintiff appearing by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney, and the Defendant, Kenneth A. Washington, appearing
not.

The Court being fully advised and having examined the
file herein finds that Defendant, Kenneth A. Washington,
acknowledged receipt of Summons and Complaint on April 17, 1985.
The time within which the Defendant could have answered or
otherwise moved as to the Complaint has expired and has not been
extended. The Defendant has not answered or otherwise moved, and
default has been entered by the Clerk of this Court. Plaintiff
is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
Plaintiff have and recover judgment against the Defendant,
Kenneth A. Washington, for the principal sum of \$657.33, plus

60

interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from March 9, 1984, until judgment, plus interest thereafter at the current legal rate of 8.57 percent from date of judgment until paid, plus costs of this action.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN - 4 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARTHA A. JONES,

Defendant.

CIVIL ACTION NO. 85-C-335-E

AGREED JUDGMENT

This matter comes on for consideration this 3 day
of June, 1985, the Plaintiff appearing by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney, and the Defendant, Martha A. Jones, appearing pro se.

The Court, being fully advised and having examined the
file herein, finds that the Defendant, Martha A. Jones,
acknowledged receipt of Summons and Complaint on April 23, 1985.
The Defendant has not filed her Answer but in lieu thereof has
agreed that she is indebted to the Plaintiff in the amount
alleged in the Complaint and that judgment may accordingly be
entered against her in the amount of \$1,201.62, plus costs of
this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
Plaintiff have and recover judgment against the Defendant,

Martha A. Jones, in the amount of \$1,201.62, plus costs of this action, plus interest from the date of judgment at the rate of 8.57 percent per annum until paid.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins
NANCY NESBITT BLEVINS
Assistant U.S. Attorney

Martha A. Jones
MARTHA A. JONES

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARY L. LYNN, a/k/a

GARY LEE LYNN,

Defendant.

JUN 4 1985

JOHN C. SMITH, JR.
U. S. DISTRICT COURT

CIVIL ACTION NO. 85-C-475-E

AGREED JUDGMENT

This matter comes on for consideration this 3rd day of June, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Gary L. Lynn, a/k/a Gary Lee Lynn, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that Defendant, Gary L. Lynn, a/k/a Gary Lee Lynn, was served with Summons and Complaint. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount of \$1,190.56, plus the accrued interest of \$145.15 as of April 2, 1985, plus interest at 3 percent per annum from April 2, 1985, until judgment, plus interest thereafter at the legal rate from the date of judgment until paid, plus the costs of this action.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Gary L. Lynn, a/k/a Gary Lee Lynn, for the principal sum of

\$1,190.56, plus the accrued interest of \$145.15 as of April 2, 1985, plus interest at 3 percent per annum from April 2, 1985, until judgment, plus interest thereafter at the current legal rate of 8.57 percent from the date of judgment until paid, plus the costs of this action.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

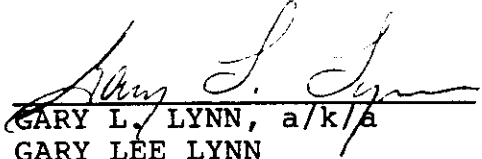
APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney



PETER BERNHARDT
Assistant U.S. Attorney



GARY L. LYNN, a/k/a
GARY LEE LYNN

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DAVID H. SANDERS,

Plaintiff,

v.

THE FLINTKOTE COMPANY, a Delaware
corporation, using the trade name
and doing business as Genstar Building
Materials Company, and Genstar
Building Materials Company, a Delaware
corporation,

Defendants and Third-
Party Plaintiffs,

RICK LINAM, Individually and d/b/a L & T
ROOFING, and THOMAS CONCRETE PRODUCTS, CO.)

JUN -3 1985
CCK C. SILVER, CLERK
U.S. DISTRICT COURT
No. 84-C-665-B

DISMISSAL WITHOUT PREJUDICE

COMES NOW Third Party Plaintiff, The Flintkote Company,
and hereby dismisses without prejudice Third Party Defendant,
RICK LINAM, Individually and d/b/a L & T Roofing, only.

RHODES, HIERONYMUS, JONES, TUCKER & GABLE

By: *William B. Selman*
William B. Selman
2800 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-1173
Attorneys for Defendants and Third Party
Plaintiffs

CERTIFICATE OF MAILING

I, William B. Selman, do hereby certify that a true and
correct copy of the foregoing Dismissal Without Prejudice has been
mailed to the following attorneys of record on this 3rd day of
June, 1985, with sufficient postage fully prepaid thereon: Mr.
William S. Hall, Esq., 816 Enterprise Building, Tulsa, Oklahoma
74103; and Paul T. Boudreaux, 507 S. Main Street, 300 Oil Capital
Bldg., Tulsa, Oklahoma 74103.

William B. Selman
William B. Selman

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 3 1985

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL D. VISOR,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-368-E

DEFAULT JUDGMENT

This matter comes on for consideration this 3rd day
of June, 1985, the Plaintiff appearing by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney, and the Defendant, Michael D. Visor, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendant, Michael D. Visor, acknowledged
receipt of Summons and Complaint on April 21, 1985. The time
within which the Defendant could have answered or otherwise moved
as to the Complaint has expired and has not been extended. The
Defendant has not answered or otherwise moved, and default has
been entered by the Clerk of this Court. Plaintiff is entitled
to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
Plaintiff have and recover judgment against the Defendant,
Michael D. Visor, for the principal sum of \$843.20, plus interest
at the rate of 15.05 percent per annum and administrative costs
of \$.61 per month from October 4, 1983, and \$.68 per month from

January 1, 1984, until judgment, plus interest thereafter at the current legal rate of 8.57 percent from date of judgment until paid, plus costs of this action.

S/ JAMES O. NELSON
UNITED STATES DISTRICT JUDGE

FILED

JUN - 3 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TERRY L. NICHOLS and CAROLYN
NICHOLS; HAROLD R. DEAN and
LORENE S. DEAN,

Plaintiffs,

versus

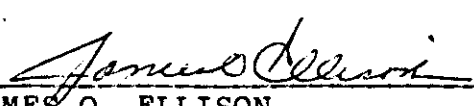
BURLINGTON NORTHERN RAILROAD
COMPANY, a Delaware
Corporation,

Defendant.

NUMBER: 84-C-90-E and ✓
84-C-146-E
(CONSOLIDATED)

ORDER OF DISMISSAL

Upon the Application of the Plaintiffs, TERRY L. NICHOLS and CAROLYN NICHOLS; HAROLD R. DEAN and LORENE S. DEAN, and the Defendant, BURLINGTON NORTHERN RAILROAD COMPANY, advising the Court that the causes of action have been fully settled between the parties, the Court orders that all causes of action herein are hereby dismissed with prejudice.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUN 3 1985

ANDREW R. ZINSMEYER, et al.,

Plaintiffs,

vs.

VAN DYKE PREVIOUS METALS, INC.,
et al.,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT


No. 85-C-182-E

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that Defendant Freestone Resources, Inc., is in involuntary bankruptcy proceedings in the State of Texas and that the rights of all the parties and the issues involved herein will be adjudicated in that proceeding. It is therefore ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

It is so ORDERED this 3RD day of June, 1985.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE